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ALL THE STATUTES Now in FORCE and USE CONCERNING Bankrupts,

Are here Methodically Digested.

TOGETHER WITH

The JUDGES Resolutions thereupon.

AS ALSO

Their Resolutions on the Statutes of 13 *Eliz.* and 27 *Eliz.* touching *Fraudulent Conveyances.*

To which are Added

The late ACTS against Fraudulent Devises and Clandestine Mortgages.

By *G. B.* of *Grays-Inn*, Esq;

LONDON, Printed by the Assigns of *Rich.* and *Edw. Atkins* Esquires, For *J. Walthoe* in *Vine Court*, *Middle Temple.* 1695.

Law
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"Bankrupts"

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Gentle Reader,

THou haſt here a Methodical Digeſtion of the ſeveral Statutes concerning Bankrupts preſented to thy View: Together with ſuch Expoſitions as have been made of the ſeveral parts of them, by the Learned Judges of this Kingdom, ſince they came forth.

And in regard the Matter hereof may concern moſt Men, I thought it would not be unneceſſary to be Publiſhed. For although there be a Reading in Print upon

on ſome of thoſe Statutes, more full of abſtruſe Notions and Learning than this is, yet I have ſome ground to believe, that this will be thought for ordinary Capacities, and the generality of Men, much more Uſeful. I have alſo added hereunto the ſeveral Statutes of 13 Eliz. *and* 27 Eliz. *touching Fraudulent Conveyances, with the like Expoſition of the Learned Judges on them, in ſeveral Caſes annexed. As alſo the two late Acts againſt Fraudulent Deviſes and Clandeſtine Mortgages, which will be likewiſe of farther Uſe unto thee. Farewel.*

G. B.

In a Bankrupt, Note
- What he is discovered
  - 1. By a general description. Sect. 1, 2.
  - 2ly. By his Trade. 4, 5, 6, usq; ad Sect. 11.
  - 2ly. By his demeanour. 12, 13, 14, usq; ad Sect. 25.
  - 2ly. By the final cause of all. Sect. 26.
- The proceeding against, and punishment of him
  - 1. In general he shall be accompted a Bankrupt, and m
  - 2ly. In particular by persons
    - 1. Immediately appointed by the Act
    - 2ly. Mediately authorised by Lord Chancellor
      - 1. Their Commis
        - 1. A
        - 2ly. Their authority
          - 2. As
          - Est
      - 3ly. Their accom
      - 4ly. Their reme sued

made thereby incapable to disposse of his own. Sect. 28.

ct; and therein note
- 1. What they are. Sect. 29.
- 2. Their authority set forth
  - 1. Generally. Sect. 29.
  - 2. Particularly
    - 1. Touching his person. Sect. 30.
    - 2ly. As to his Estate and therein note
      - 1. The way of discovering it. 32, 33, 34.
      - 2. The disposal of it. Sect. 35.

ission. Sect. 36.

As to the Bankrupts person. Sect. 39, 40, 41.

As to his state
- 1. What it is
  - real. 43, 45, usq; ad 57.
  - personal. 61, 62, usq; ad 71.
- 2ly. The means of discovery
  - as to the persons
    - other persons
      - the Bankrupt himself. Sect. 73, 74, 75, 76.
      - the Bankrupts Wife. Sect. 77.
      - proceeding with them
        - what persons. Sect. 78.
        - to send for them. Sect. 78.
        - to examine them. Sect. 78.
        - to punish them. 79, 80, usq; ad 86.
        - allowance to them of charges. Sect. 87.
  - as to the goods, by breaking open locks, &c for them. Sect. 72.
- 3ly. The disposal of it
  - 1. By appraisement, Sect. 88, &c.
  - 2. By sale, Sect. 89, &c.
  - 3. By distribution
    - to whom, 89, 90
    - of what, 90, 91, 92, 93, 94, 95, 96, 97, 98.
    - the Time when, not until 4 months, &c. Sect. 105, 108.
    - the manner; Rate and Rate like, Sect. 109.
    - the effect of it
      - to barr, Sect. 112.
      - to vest the property, Sect. 113.
      - to give means of Recovery, Sect. 118.
      - to restore to the Bankrupt his capacity, Sect. 123.

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What a Bankrupt is, and his Description.

34 *Hen.* 8. *Chap.* 4.

THe Lord Chancellor, Treasurer, *&c.* shall take order with Bankrupts Bodies, Lands, and Goods for the payment of their Debts. A. 13 *El.* 7. 1 *Jac.* 15. 21 *Jac.* 19.

13 *Eliz. Chap.* 7.

Who is a Bankrupt, how and by whom his Body, Lands, and Goods shall be ordered for the payment of his Creditors.

FOrasmuch as notwithstanding the Statute made against Bankrupts, in the xxxiiii year of

the Reign of our late Sovereign Lord King Henry the eighth, those kind of persons have, and do still increase into great and excessive numbers, and are like more to do, if some better provision be not made for the repression of them. And for a plain declaration to be made and set forth, who is and ought to be taken and deemed for a Bankrupt: Therefore be it enacted and established by the Authority of this present Parliament, That if any Merchant or other person, using or exercising the trade of Merchandize, by way of Bargaining, Exchange, Rechange, Bartry, Chevisance, or otherwise, in gross, or by retail, or seeking his or her trade of living, by buying and selling, and being Subject born of this Realm, or of any the Queens Dominions, or Denizen, sithence the first day of this present Parliament hath,

or

or at any time hereafter shall depart the Realm, or begin to keep his or her House or Houses, or otherwise to absent him or her self, or take Sanctuary, or suffer him or her self willingly to be arrested for any debt or other thing, not grown or due for Money delivered, Wares sold, or any other just or lawful cause, or good consideration or purposes, hath or will suffer him or her self to be outlawed, or yield him or her self to prison, or depart from his or her dwelling House or Houses, to the intent or purpose to defraud or hinder any of his or her Creditors, being also a Subject born, as is aforesaid, of the just Debt or Duty of such Creditor or Creditors, shall be reputed, deemed, and taken for a Bankrupt.

And be it enacted by the Authority aforesaid, That the Lord Chancellour of England, or Lord

Keeper of the great Seal of England for the time being, upon every complaint made to him in writing, against any such person or persons being Bankrupt, as is before defined, shall have full power and Authority by Commission under the great Seal of England, to name, assign, and appoint such wise and honest discreet persons, as to him shall seem good: Who or the most part of them, by vertue of this Act and of such Commission, shall have full power and authority to take by their discretions such order and direction, with the body and bodies of such person, wheresoever he or she may be had, either in his or her House or Houses, Sanctuary or elsewhere, as well by imprisonment of his or her body or bodies, as also with all his or her Lands, Tenements, Hereditaments, as well Copy or Customary-hold, as Free-hold, which

which he or she shall have in his or her own right, before he or she became Bankrupt, and also with all such Lands, Tenements and Hereditaments, as such person shall have purchased, or obtained for money, or other recompence joyntly with his wife, children or childe, to the only use of such offendor, or offendors, or of, or for such use, interest, right or title, as such offendor or offendors then shall have in the same, which he or she may lawfully depart withal, or with any person or persons, of trust to any secret use of such offendor or offendors, and also with his or her money, goods, cattels, wares, merchandizes and debts, wheresoever they may be found or known, and cause the said Lands, Tenements, Fees, Annuities, Offices, Goods, Cattels, Wares, Merchandizes and Debts, to be searched, viewed rented, and apprayled to the best

value

value they may, and by Deed indented, inrolled in one of the Queens Majesties Courts of Record, to make sale of the said Lands, Tenements, and Hereditaments, and of all Deeds, Writings, and Evidences, touching only the same, belonging to such offendor or offendors, debtor or debtors, and also of all Fees, Annuities, Offices, Goods, and Cattels, or otherwise to order the same for true satisfaction and payment of the said Creditors: that is to say, To every of the said Creditors a portion, rate and rate like, according to the quantity of his or their debts: and that every direction, order, bargain, sale, and other things done by the said persons so authorised, as is aforesaid, in form aforesaid, shall be good and effectual in the Law, to all intents, constructions, and purposes, against the said offendor or

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offendors, debtor or debtors, his or their wife or wives, heir and heirs, childe and children, and such person and persons, as by such joynt purchase with the said offendor or offendors, as is aforesaid, have or shall have any estate or interest in the premisses, and against all other person and persons claiming by, from, or under such offendor or offendors, debtor or debtors, by any Act or Acts had, made, or done after any such person shall become bankrupt, as is aforesaid, & also against the Lords of the Mannors, whereof the said Copyhold or Customary lands be'n holden, their heirs, successors, and assigns, and every of them.

Provided always, and be it enacted by the Authority aforesaid, That all and every person or persons, to whom any such sale of Copyhold, or Customary Lands, or Tenements shall be made,

shall

ſhall beſoꝛe ſuch time as they oꝛ any of them ſhall enter oꝛ take any pꝛoſit of the ſame Lands oꝛ Tenements, agree and compound with the Loꝛds of the Mannoꝛs of whom the ſame ſhall be holden, foꝛ ſuch fines oꝛ incomes as heretofoꝛe hath bæn moſt uſual and accuſtomed to be yælded oꝛ paid thereſoꝛe: and that upon evety ſuch agræment oꝛ compoſition, the ſaid Loꝛds foꝛ the time being, at the next Court to be holden at oꝛ foꝛ the ſaid Mannoꝛs, ſhall not only grant unto the ſaid Vendee oꝛ Vendees, upon requeſt, the ſame Copy oꝛ Cuſtomary Lands oꝛ Tenements, by Copy of Court Roll, of the ſame Mannoꝛs, foꝛ ſuch eſtate oꝛ intereſt as to them ſhall be ſold, and reſerving the antient Rents, Cuſtoms, and Services: but alſo in the ſame Court admit them Tenants of the ſame Copy oꝛ Cuſtomary

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in execution, shall upon
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Executors, Administrators,
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that upon every such ag
or composition, the sai
for the time being, at
Court to be holden at o
said Mannors, shall n
grant unto the said Ven
Vendees, upon request, the
Copy or Customary Land
Tenements, by Copy of C
Roll, of the same Mannors
such estate or interest as t
shall be sold, and reserv
antient Rents, Custom
Services: but also in t
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the same Copy or Cu

Lands, as other Copyholders of the same Mannors, have been wont to be admitted, and to receive their fealty accordingly.

Provided always, and be it enacted by the Authority aforesaid, That such of the said Commissioners as shall put the said Commission in execution, shall upon lawful request to them made by the said Bankrupt, not only make a true declaration to the same Bankrupts, of the imploying and bestowing of their said Lands, Tenements, Offices, fees, goods, cattels, and debts so payed and satisfied to their said Creditors, but also make payment of the overplus of the same (if any such shall be) to the said Bankrupts, their Executors, Administrators, or Assigns.

And be it further enacted by the Authority aforesaid, that if after any such act or offence committed, and complaint thereof made

to

to the said Commissioners so to be appointed, as is aforesaid, or the more part of them, by any party grieved, as is aforesaid, concerning the premisses, knowing, supposing, or suspecting any of the goods, cattels, wares, merchandizes, or debts of such offendor or offendors, debtor or debtors, to be in custody, use, occupying, keeping, or possession of any person or persons, or any person or persons to be indebted to any such offendor or offendors, do make relation thereof to the said Commissioners so to be appointed, or the more part of them: that then the said Commissioners, or the most part of them, shall by vertue hereof and of the said Commission, have full power and authority to send for, and call before them by such Processe, ways or means, as they shall think convenient by their discretions, all and every such per-

person and persons so known, suspected, or supposed to have any such goods, cattels, wares, merchandizes, or debts, in his or their custody, use, occupation, keeping, or possession, or supposed, or suspected to be indebted, to such offendor or offendors, and upon their appearance, to examine them, and every of them, as well by their Oaths as otherwise, by such ways and means as the said Commissioners, or the more part of them, by their discretions shall think meet and convenient, for and upon the specialty, certainty, true declaration, and knowledge of all and singular such goods, cattels, wares, merchandizes, and debts of any such offendor or offendors, as be supposed or suspected to be in his or their custody, use, occupatio n or possession, and all such debts as by them or any of them, shall be supposed or suspected to

be

be owing to any such offendor or offendors.

And if any such person or persons upon such examination, do not disclose and plainly declare, and shew the whole truth of such things as he or they shall be examined of concerning the premisses to his knowledge, or do deny to swear: then every such person or persons so denying to swear, or being examined do not declare the plain and whole truth concerning the premisses, upon due proof thereof to be made before the said Commissioners, or the more part of them so to be appointed, as is aforesaid, by witness, examination, or otherwise, as to the said Commissioners, or the more part of them shall seem sufficient in that behalf, shall lose and forfeit double the value of all such goods, cattels, wares, merchandizes, and debts, by them or any of them so concealed,

cealed, and not wholly and plainly declared and shewed: which forfeiture shall be levied by the said Commissioners, or the more part of them, of the Lands, Tenements, Hereditaments, goods, and cattels, of such person so denying to swear, or not disclosing the whole truth, as is aforesaid, by such ways and means, and in such manner and form, as is before limited and appointed for the principal offendor or offendors, debtor, or debtors, and the same forfeiture or forfeitures to be distributed, or imployed to and for the satisfaction and payments of the debts of the said creditor or creditors, in such like manner, rate, and form, as is above declared, concerning the ordering of the lands and tenements, offices, fees, goods, and cattels, of such offendor or offendors, debtor or debtors as is aforesaid.

And be it further enacted,

That if at any time before or after that any such person or persons departeth the Realm, or shall keep his or their House or Houses, or otherwise absent him or themselves, or take sanctuary, or suffer him or themselves to be arrested, outlawed, or yeeld his or their bodies to prison, as is aforesaid: any person or persons do fraudulently by covin or collusion, claim, demand, recover, possess, or detain any debts, duties, goods, cattels, lands, or tenements, by writing, trust, or otherwise, which were or shall be due, belonging, or appertaining to any such offendor or offendors. other than such as he or they can and do prove to be due by right and conscience in form aforesaid, for money payed, wares delivered, or other just consideration or cause reasonable, to the just value thereof, before the said Commissioners so to be appointed, or

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the more part of them, as is aforesaid, and the same to proceed (bona fide) without fraud or covin: that then every such person or persons so craftily demanding, claiming, having, possessing, or detaining any such debt, duty, or other thing, as is aforesaid, shall forfeit and lose double as much as he or they shall so claim, demand, detain, or possess, which said forfeiture shall be levied, recovered, and imployed in manner and form as is afore rehearsed.

Provided also, and be it enacted by Authority aforesaid, that if it shall fortune the creditors of any such bankrupt, as is aforesaid, to be satisfied and paid of their debts and duties, of, or with the proper lands, tenements, goods, cattels, and debts of the said Bankrupts, or of, or with the same, and some part of the forfeitures of the said double values

to be forfeited, as is aforesaid, and that there shall remain an overplus of the said forfeitures of the said double values: that then the one moiety of the said overplus of the said forfeitures of the double values so remaining, shall be by the said Commissioners so executing the said Commission, within convenient time after the levying thereof, paid unto the Queens Majesty, her Heirs and Successors, and the other moiety thereof shall be by the said Commissioners employed and distributed to and amongst the poor within the Hospitals in every City, Town, or County, where any such Bankrupt shall happen to be: Any thing in this Act to the contrary thereof notwithstanding.

And be it further enacted by Authority aforesaid, that if any such person or persons which is or shall be indebted, do of purpose with-

withdraw him or themselves out or from his or their usual mansion house or houses : that then upon complaint thereof made to the said Commissioners having authority, as is aforesaid, the same Commissioners, or the more part of them, shall by vertue and authority of this present Act, have full power and authority to award five Proclamations to be made in the Queens name, upon five sundry Market-days, in such places neer the place where such Bankrupt hath most commonly dwelled or made his abode, commanding him or them by the same Proclamations in the Queens name to return with all convenient speed, and to yeeld his or their bodies before the said Commissioners, having authority, as is aforesaid, or one of them, at such time and place as by the said Proclamation shall be appointed : and if the said person

do not according to such Proclamation repair and yeeld his or their body, as is aforesaid, that then the body of all and every such offendor or offendors, shall be adjudged, taken, and deemed to all intents and purposes out the Queens protection: and that also every person and persons that shall willingly and wittingly help to hide or convey, or shall wittingly and willingly receive, detain, or keep secretly any person or persons so demanded by Proclamation as is aforesaid, shall suffer such pains by imprisonment of his or their bodies, or to pay such fine to our Sovereign Lady the Queens Majesty, her Heirs and Successors, as to the said Lord Chancellor, or Lord Keeper of the great Seal (being informed thereof) by the Commissioners so to be appointed as is aforesaid, or the more part of them shall seem meet and convenient

venient for their said offence or offences.

Provided always, and be it further enacted, that if the Creditors of any such offendor or offendors, debtor or debtors, which so do depart the Realm, keep his or their house or houses, or otherwise absent or withdraw him or themselves into places unknown, or take Sanctuary, or will suffer him or themselves to be arrested or outlawed, or yeeld his or their bodies into prison purposely, and for the causes aforesaid, be not fully satisfied or otherwise contented for their debts and duties by the ways and means before specified and declared: that then the said Creditor or Creditors, and every of them, shall and may have their remedy for the recovery and levying of the residue of their said debts or duties, whereof they shall not be fully satisfied, payd, or otherwise contented in

form aforesaid, against the said offendor or offendors, in like manner and form as they should and might have had before the making of this Act. And that the said creditor or creditors, and every of them, shall be only barred and excluded by vertue of this Act, of, and for every such part and portion of the said debts and duties as shall be paid, satisfied, distributed, or delivered unto him or them by order of the said persons, as is aforesaid, and of no more portion or parcel thereof: Any thing herein specified that may be taken or construed to the contrary notwithstanding.

Provided always, and be it also enacted by authority aforesaid, that if any person or persons, which is or shall be published and declared to be a Bankrupt by vertue of this Act, shall at any time after purchase any lands, tenements, hereditaments, free,

or copy, offices, fees, goods or cattels: or that any lands, tenements, hereditaments; free or copy, offices, fees, goods, or cattels shall descend, revert, or by any means come to any such person or persons being Bankrupts as is aforesaid, before such time as their debts due to their creditors shall be fully satisfied and payed, or otherwise agreed for: that then the said lands, tenements, hereditaments, as well free as copy, offices, fees, goods and cattels, shall by vertue of this Act, be by the said Commissioners to be appointed as is aforesaid, or the more part of them, be bargained, sold, extended, delivered and used for and towards the payment of the said creditors, in such like manner and form as other the lands, tenements, hereditaments, free or copy, offices, fees, goods, and cattels of the said Bankrupts,

which

which they had when they were were first declared to be Bankrupts, should or might have been bargained, sold, disposed, or used by vertue of this Act.

Provided always, that this Act shall not extend to any lands, tenements, or hereditaments free or copy-hold, which heretofore have been assured by any such Bankrupt, or hereafter shall be assured by any Bankrupt before he become Bankrupt: so always that such assurance be made bona fide, and not to the use of the Bankrupt himself only, or of his heirs: and that the parties to whose use such assurance hath or shall be made, be not at or before the making of such assurance, privy or consenting to the fraudulent purpose of any such Bankrupt, to deceive his Creditors. 1 Jac. 15. 21 Jac. 15.

1 *Jacob.* Chap. 15.

An Exposition and addition to the Statutes of Bankrupts, made 13 *Eliz.* 7.

FOr that fraud and deceits as new diseases, dayly increase amongst such as live by buying and selling, to the hinderance of traffick and mutual commerce, and to the general hurt of the Realm, by such as wickedly and wilfully become Bankrupts: And for that the description of a Bankrupt, in former Statutes is not so fully expressed, nor the power given thereby to the Commissioners for Bankrupts, so large as is meet, in such cases of deceit, to prevent the deceitful actions of Bankrupts.

For remedy whereof, Be it therefore enacted by our Soveraign Lord the King, and by the Lords

Lords Spiritual and Temporal, and the Commons at this present Parliament assembled, and by the authority of the same, That all and every such person & persons, using or that shall use the trade of Merchandize, by way of bargaining, exchange, barrtrie, thevisance, or otherwise in grosse, or by retail, or seeking his, her, or their trade of living by buying and selling, and being a Subject born of this Realm, or any the Kings Dominions, or Denizen, who at any time sithence the first day of this present Parliament, or at any time hereafter shall depart the Realm or begin to keep his or her house or houses, or otherwise to absent him or her self, or take Sanctuary, or suffer him or her self, willingly to be arrested for any debt, or other thing not grown or due for money delivered, wares sold, or any other just or lawful cause

cause, or good consideration, or purposes, or hath or will suffer him or her self to be outlawed, or yeeld him or her self to prison, or willingly or fraudulently hath or shall procure him or her self to be arrested, or his or her goods, money or chattels to be attached or sequestred, or depart from his or her dwelling house, or make or cause to be made any fraudulent grant or conveyance of his, her or their Lands, Tenements, goods or chattels, to the intent or whereby his, her or their Creditors being Subjects born as aforesaid, shall or may be defeated or delayed for the recovery of their just and true debts, or being arrested for debt, shall after his or her arrest, lie in prison six moneths or more, upon that arrest or upon any other arrest or detention in prison for debt, and lie in prison six moneths upon such other arrest or detention, shal

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be accompted and adjudged a Bankrupt to all intents and purposes.

And be it further enacted by the authority of this present Parliament, that the like Commissions, orders, benefits and remedies, which are and be provided and limited by the said former Act of Parliament (made in 13 nuper Eliz. Reginæ) against any Bankrupts therein described, for or concerning his, her or their lands, tenements, hereditaments, fees, annuities, offices, goods, chattels, wares, merchandizes and debts, or any of them, shall be had, pursued, taken and expounded against such person and persons that are herein expressed to be Bankrupts, his, her, and their lands, tenements, hereditaments, fees, annuities, offices, goods, chattels, wares, merchandises and debts, in such like manner and form as the same

ought

ought or might have been if the persons herein described to be Bankrupts had been described to be Bankrupts, according to the intent of the said former Statute.

And that it shall be lawful for any of the creditors of the said Bankrupt within iiij moneths after any such Commission shall be sued forth, and until distribution shall be made by the said Commissioners for the payment of the Bankrupts debts, as in such case hath been used, to partake, and joyn with the other Creditors, that shall sue forth any such commission, for satisfaction and payment of his, her or their debts, to him or them owing, without any hinderance, let or disturbance of any of the same Commissioners, or of any of the other creditors of any such Bankrupts, the same Creditors so coming in to contribute to the charges of

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the said Commission, and that if the said Creditors come not in within iiij moneths, then the Commissioners to have power to distribute.

Be it further enacted, that if any person which hereafter is or shall be a Bankrupt, by intent of this Statute, shall convey or procure, or cause to be conveyed to any of his children, or other person or persons, any mannors, lands, tenements, hereditaments, offices, fees, annuities, leases, goods, chattels, or transfer his debts into other mens names, except the same shall be purchased, conveyed, or transferred, for or upon marriage of any of his or her children, both the parties married, being of the years of consent, or some valuable consideration, shall be in the power and authority of the Commissioners in this behalf to be appointed, or the more part of them, to bar.

bargain, ſell, grant, convey, demiſe, or otherwiſe to diſpoſe thereof, in as ample manner, as if the ſaid Bankrupt had been actually ſeiſed or poſſeſſed thereof, or the debts were in his own name of the like eſtate or intereſt to his or their own uſe, at ſuch time as he or ſhe became Bankrupt. And that every ſuch grant, bargain, ſale, condeyance, and diſpoſition of the ſaid Commiſſioners, or of the greater part of them, ſhall be good and available to all intents, conſtructions, and purpoſes in the Law againſt the offendor or offendors, his heirs, executors, adminiſtrators, and aſſigns, and ſuch children and perſons as ſhall be ſubject to this Statute, and againſt all other perſon and perſons claiming by, from, or under ſuch offendor or offendors, or ſuch ſaid other perſons, to whom ſuch conveyance ſhall be made by the ſaid Bank-

the said Commission, and that if the said Creditors come not in within iiij moneths, then the Commissioners to have power to distribute.

Be it further enacted, that if any person which hereafter is or shall be a Bankrupt, by intent of this Statute, shall convey or procure, or cause to be conveyed to any of his children, or other person or persons, any mannors, lands, tenements, hereditaments, offices, fees, annuities, leases, goods, chattels, or transfer his debts into other mens names, except the same shall be purchased, conveyed, or transferred, for or upon marriage of any of his or her children, both the parties married, being of the years of consent, or some valuable consideration, shall be in the power and authority of the Commissioners in this behalf to be appointed, or the more part of them, to bar-

bargain, sell, grant, convey, demise, or otherwise to dispose thereof, in as ample manner, as if the said Bankrupt had been actually seised or possessed thereof, or the debts were in his own name of the like estate or interest to his or their own use, at such time as he or she became Bankrupt. And that every such grant, bargain, sale, conveyance, and disposition of the said Commissioners, or of the greater part of them, shall be good and available to all intents, constructions, and purposes in the Law against the offendor or offendors, his heirs, executors, administrators, and assigns, and such children and persons as shall be subject to this Statute, and against all other person and persons claiming by, from, or under such offendor or offendors, or such said other persons, to whom such conveyance shall be made by the said Bank-

rupt, or by his means or procurement.

And for that the practises of Bankrupts of late are so secret and so subtile, as that they can very hardly be found out, or brought to light: and for that the former statute giving power to the Commissioners to examine others than the Bankrupts, hath not fully or sufficiently authorized them to examine the said Bankrupt upon oath: For remedie whereof, Be it further enacted by the authority of this present Parliament, That the said Commissioners may call before them, or the greater part of them, the said Bankrupt: and if upon lawful warning left or made in writing at three several times at the dwelling place or house where the said Bankrupt, his wife, or family, for the most part of his abode, did lodge or remain, within one year next

next before he, she, or they became Bankrupt, the said Bankrupt shall not appear before the said Commissioners, or the greater part of them, That then and from thencefoorth it shall be lawful for the greater number of the said Commissioners, to appoint to proclaim the said party a Bankrupt, at such publike place or places, where the said Commissioners, or the greater part of them shall think meet, warning him, her, or them to appear before them upon the said Commission, at some time appointed. And that if upon five several Proclamations made in some publike place, the party offending appear not before the said Commissioners, and yeeld his, her or their bodies to them, or some of them the said Commissioners, or the greater part of them, shall or may award a Warrant to such fit person or persons, as they

think meet, to apprehend the body and bodies of the said offendor, and offendors, and to bring him, her, or them so offending, before the said Commissioners, whersoever the said party or parties offending may be found, in place priviledged or not, to be examined by the said Commissioners, or the greater part of them.

And that it shall be lawful for the said Commissioners, or the greater part of them, to examine the said offendor or offendors, upon such Interrogatories, touching the Lands, tenements, goods, chattels, debts, bills, bonds, books of account, and such other things, as may tend to disclose his, her, or their estate, or the secret grants, conveyances and elopning of his, or their lands, tenements, goods, money and debts, as they shall think meet.

And

And that if therein the offendor or offendors shall refuse to be examined, or to answer fully to every Interrogatory to him to be ministred by the said Commissioners, or the greater part of them, it shall be lawful for the said Commissioners, or the greater part of them, to commit the said offendor or offendors to some strait or close imprisonment, there to remain until he, she, or they shall better conform him or herself.

And that if upon his, her or their examination it shall appear, that he, she, or they have committed any wilful or corrupt perjury, tending to the hurt or dammage of the creditors of the said Bankrupt, to the value of ten pounds of lawful money of England, or above, the party so offending, shall or may thereof be indicted in any of the Kings Majesties Courts of Record, and

being lawfully convicted thereof, shall stand upon the Pillory in some publike place by the space of two hours, and have one of his ears nailed to the pillory, and cut off.

And whereas by the former Statute made in the said thirteenth year of the reign of the late Queen Elizabeth, the Commissioners for Bankrupts have power given to them to send for such person or persons as the creditors shall know, suppose, or suspect to have, detain, or keep any part of the money, goods, chattels, or debts of the said offendor or offendors, or to be indebted to the said offendor or offendors, to be examined by the said Commissioners, as by the same Statute appeareth, but have not good means or remedy by imprisonment or other penalty, to procure the person so sent for by them to appear before them,

them, nor having appeared before them, to make answer upon his oath to such Interrogatories as shall be ministred unto him by the said Commissioners, for and upon the specialty, certainty, true declaration and knowledge of such lands, tenements, hereditaments, goods, debts, or other things of any such offendor or offendors, as be, or shall be, or which shalbe suspected to be in his custody, use or possession, or in the custody, use, or possession of any other to his knowledge, and of all debts owing to, or for the benefit of such offendor or offendors, by himself or by any other to his knowledge, so as many times a great part of the offendor or offendors lands, tenements, hereditaments, goods, chattels, or debts, which by the true intent of the said Statute should be imployed to the satisfaction of the creditors of the offendor or of-

fendors, are concealed or detained in the hands of such person and persons as refuse to come, or being come refuse to be sworn before the said Commissioners, to be examined in that behalf, to the great encouragement of all Bankrupts and their wicked confederates and accessaries, and to the great hinderance of the just remedies of the creditors of the said Bankrupts for their true and just debts to them owing: For remedy whereof, be it further enacted by the authority aforesaid, That if any person or persons being known, supposed, or suspected to have or detain any part of the lands, tenements, or hereditaments, goods, chattels or debts of the said Bankrupt, or to be indebted to, or for the benefit of the said Bankrupt, shall after lawful warning to the said person or persons given to come before the said Commissioners,

ners, or the greater part of them, to be examined according to the intent of the said Statute, refuse to come, or shall not come before the said Commissioners at the time appointed, having no lawful impediment (such as shall be admitted and allowed of by the said Commissioners or the more part of them, and which shall be then signified or made known to the said Commissioners, at the time of their assembly:) Or that any such person or persons having knowledge or warning of any other assembly or meeting of the said Commissioners again, shall not come and appear before them at such time as he or she lawfully may come, having no such lawful impediment as shall be then made known to the said Commissioners, and by them admitted and allowed of as aforesaid, Or being come before them shall refuse to

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be ſworn and to make anſwer to ſuch Interrogatories as ſhall be miniſtred unto him or them, according to the true intent and meaning of the ſaid Statute made in the ſaid thirteenth year of the reign of our ſaid late Sovereign Lady Queen Elizabeth, or of this preſent Act, That then it ſhall be lawful for the ſaid Commiſſioners, or for the greater part of them, to commit to ſuch Ward and Priſon as to them or to the greater part of them ſhall be thought meet, all ſuch perſon and perſons as ſhall ſo refuſe to be ſworn and make anſwer to ſuch Interrogatories as ſhall be ſo miniſtred as aforeſaid, and alſo to direct their Warrants to ſuch perſon or perſons as to them or the greater part of them ſhall be thought meet, to apprehend and arreſt ſuch perſon or perſons as ſhall refuſe to appear before them as aforeſaid,

and

and to bring him, her, or them before the said Commissioners, or the greater part of them to be examined as above-said, and upon his, her, or their refusal to come or to be examined before the said Commissioners as aforesaid, to commit the said party so refusing, to such prisons as the said Commissioners or the greater part of them shall think meet, there to remain without bail or mainprise, until such time as the said person so refusing to come, or to be sworn to answer before the said Commissioners, shall submit him or her self to the said Commissioners, and be by them examined according to the true intent of the said Statute, and of this present Act.

Provided always, that such Witnesses as shall so be sent for, shall have such costs and charges as the Commissioners

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in their discretion shall think fit: The same charges to be ratably born by the Creditors of the said Bankrupt, according to the proportion of each of their several debts. And if any person or persons, other than the Bankrupt, either by suborнation, unlawful procurement, sinister perswasion, or means of any others, or by his own act, consent, or agreement, shal wilfully and corruptly commit any manner of wilful perjury by his deposition to be taken before the said Commissioners, or the greater part of them, as aforesaid, That then the party or parties so offending, and all and every person and persons, that shall unlawfully and corruptly procure any such unlawful, wilful, and corrupt perjury, shall, or may therefore be indicted in any of the Kings Majesties Courts of Record, and after his or their con-

conviction thereof, shall incur such forfeiture, and receive and suffer such pains and punishment as are limited by the Statute made concerning Perjury, in the fifth year of the Reign of our said late Sovereign Lady Queen Elizabeth.

And be it further enacted, That all and every sum and sums of money, which shall be forfeited by force of this present Act, shall be sued for, and recovered by the said creditors only, or any of them that will sue for the same, by Action of Debt, Bill, Plaint, or Information, in any of the Kings Majesties Courts of Record, and the sum or sums of money so recovered, the charges of suit being deducted, shall be distributed and divided towards the payment of the said creditors of the Bankrupt.

And for that the power & authority given to the Commissioners

of

of Bankrupts, touching the debts due to the said Bankrupt, is not so full and perfect, as that the full benefit thereof in due course, might be imployed to the use of the said Creditors, as was intended: For remedie thereof, Be it further enacted by the Authority aforesaid, That the Commissioners of Bankrupts, or the greater part of them shall have power to grant and assign, or otherwise to order or dispose, all or any of the debts due, to and for the benefit of the said Bankrupt, by what person or persons soever, or in what manner and form soever, to the use of the creditors of the said Bankrupt, according to the true intent of the said former recited Statute of Bankrupts: And that the same Grant, Assignment, or disposition of the said debts, in form aforesaid to be made by the said Commissioners, or the greater

part

part of them, shall so vest the property, right and interest of the said debt, and debts, in the person or persons of him, her, or them, to whom it shall be granted, assigned, or ordered by the said Commissioners, or the greater part of them, as fully to all intents and purposes, as if the said Bill, Bond, Bonds, Statutes, Recognizances, Judgment, or Contract, whereupon the said Debt or Debts, Deed or Deeds shall arise or grow, had been made, to or with, or for the said person or persons, to whom the same shall be so granted, assigned, or disposed, by the said Commissioners, and that after such Grant, Assignment, or Disposition made of the said Debts, that neither the Bankrupt, nor any other to whom any such Debt shall be due, shall have power to recover the same, nor to make any release, or dis-

charge

charge thereof, neither shall the same be attached, as the Debt of the Bankrupt, or such said other person or persons, to whom the same shall be due, by any other person or persons, according to the Custom of the City of London, or otherwise, But that the party or parties to whom the same Debts shall be assigned, shall have like remedy to recover the same, as fully and lawfully in the name or names of the person or persons to whom the same shall be so granted, assigned or ordered by the said Commissioners, in all respects and purposes, as the party himself might have had, any Law, Statute, Use, or Custom to the contrary thereof in any wise notwithstanding.

Provided always, that no debtor of the Bankrupt be hereby indangered, for the payment of his other debt, truly and bona fide,

fide, to any such Bankrupt, before such time as he shall understand or know that he is become a Bankrupt.

Provided also, and be it further enacted, That such of the said Commissioners as shall put the said Commission in Execution, shall upon lawful request to them made by the said Bankrupt, not only make a true declaration to the said Bankrupts, of the imploying and bestowing of his, her, or their said lands, tenements, and hereditaments, offices, fees, goods, wares, money, cattels, and debts, which shall be paid and satisfied to their said Creditors, as is in like case limited and appointed, by the said former Statute, made in the said thirteenth year of the said late Queens Majesties reign, but also make payment of the overplus of the same, if any such shall be, to the said Bankrupts, their exe-

cutors, administrators, and assigns, and that the said Bankrupts, after the full satisfaction of the said creditors, shall have full power and authority to recover and receive the residue and remainder of the debts to them owing, Any thing in this Act contained to the contrary in any wise notwithstanding.

Be it further enacted, That if any Action of Trespass, or other suit, shall happen hereafter to be brought against any Commissioner authorized by the Statute, made in decimo tertio of our late Sovereign Lady Queen Elizabeth, for Bankrupts, or any other person or persons having authority by vertue or under the Commission, authorising the said Commissioner for the doing or executing of any matter, by force of the said Statute, or this present Statute, That the defendant or defendants, in any such action

action or suit, may plead Not guilty, or otherwise justifie that the Act or thing whereof the plaintiff or plaintiffs complained, was done by Authority of the said Act made in the thirteenth of Elizabeth, or in this present act respectively, without expressing or rehearsal of any other matter of circumstance contained in either of the said Acts, and without inforcing him or them to shew forth their Commission authorizing the said Act, or thing, whereunto the Plaintiff shall be admitted to reply, that the Defendant did the Fact, supposed in the Declaration, of his own wrong, without any such cause alleadged by the said Defendant, whereupon the issue in such action, shall be joyned to be tried by verdict of twelve men, and upon trial of that issue, the whole matter to be given on both parties in evidence, according to the very truth of the

same, And if verdict upon such issue shall pass for the defendant, the defendant to have his costs.

Provided always, and be it further enacted, That after any Commission of Bankrupts hereafter sued forth, and dealt in by the Commissioners, if the offendor happen to die, before the Commissioners shall distribute the Goods, Lands, and Debts of the offendors, or any of them, by force of the foresaid Statute, of the thirteenth year of the Reign of our late Sovereign Lady Queen Elizabeth, and this Statute, or either of them, That then nevertheless, the said Commissioners shall and may in that case proceed in execution, in, and upon the said Commission, for, and concerning the offendors Goods, Lands, Tenements, Hereditaments, and Debts, in such sort as they might have done, if the party

party Offendor were living. Stat. 21 Jac. 19.

21 *Jac. Chap.* 19.

A further deſcription of a Bankrupt. The Statutes of 13 *Eliz.* 7. and 1 Jac. 15. enlarged.

FOraſmuch as dayly experience ſheweth, that the number and multitude of Bankrupts do increaſe more and more, and alſo the frauds and deceits inventeđ and practiſed for the avoiding and deluding, the penalties of the good Laws in that behalf already made, and the remedy by them provided: And for that divers defects are dayly found in the former Statutes made againſt Bankrupts, both in the deſcription of a Bankrupt, as alſo in the power given to the Commiſſioners for the diſcovery and diſtributing the Bankrupts e-

ſtate, to the great encouragement of evil minded perſons, the hinderance of traffique and commerce, the great decay, overthrow, and undoing of many Clothiers, by whom many thouſands of the natural born Subjects of this Realm, be from time to time in all parts of this Kingdom ſet on work: all which do tend to the general hurt of this Realm: For remedy whereof, be it enacted by the Kings moſt excellent Majeſty, the Lords Spiritual and Temporal, and Commons in this preſent Parliament aſſembled, and by the Authority of the ſame, That all and ſingular the aforeſaid Statutes and Laws heretofore made againſt Bankrupts, and for relief of Creditors, ſhall be in all things largely and beneficially conſtrued and expounded for the ayd, help, and relief of the Creditors of ſuch perſon or perſons as already

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be, or hereafter shall become Bankrupt.

And that all and every person and persons using or that shall use the trade of Merchandize, by way of bargaining, exchange, bartering, chevisance, or otherwise in gross, or by retail, or seeking his, or her living, by buying and selling, or that shall use the trade or profession of a Scrivener, receiving other mens moneys or estates into his trust or custody, who at any time after the end of present Session of Parliament, shall either by himself, or others by his procurement, obtain any protection or protections, other than such person or persons as shall be lawfully protected by the priviledge of Parliament, or shall prefer or exhibit unto his Majesty, his Heirs or Successors, or unto any of the Kings Courts, any Petition or Petitions, Bill or Bills against his or her Credi-

for or Creditors, or any of them, thereby desiring or endeavouring to compel or enforce them, or any of them, to accept less than their just and principal debts, or to procure time, or longer days of payment, than was given at the time of their original contracts, or being indebted to any person or persons in the sum of one hundred pounds or more, shall not pay, or otherwise compound for the same, within six moneths next after the same shall grow due, and the Debtor be arrested for the same, or within six moneths after an original Writ sued out to recover the said debt, and notice thereof given unto him, or left in writing, at his, or their dwelling house, or last place of aboad, or being arrested for debt, shall after his or her arrest, lie in prison two moneths or more, upon that, or any other arrest or detention in prison for debt, or being arrested

for

the sum of one hundred pounds or more, of just debt or debts, shall at any time after such arrest, escape out of prison, or procure his enlargement, by putting in common or hired Bayl, shall be accounted and adjudged a Bankrupt to all intents and purposes: And in the said cases of arrest, or lying in prison for such debt or debts, or getting forth by common or hired Bayl, from the time of his or her said first arrest.

And it further enacted by the authority of this present Parliament, that the like Commissions, Orders, Benefits, and Remedies, which are and be provided and limited by the said former Acts of Parliaments, made in the thirteenth yeer of the late Queen Elizabeth, and in the first year of the Reign of our Sovereign Lord the Kings Majesty, against any Bankrupts in them,

or

or either of them described, or for, or concerning his, her, or their Lands, Tenements, Hereditaments, Fees, Annuities, Offices, Goods, Chattels, Wares, Merchandize and Debts, or any of them, shall and may be had, pursued, taken, and expounded against such person and persons as are herein, and hereby declared, described, or expressed to be Bankrupts, and against his, her, and their Lands, Tenements, Hereditaments, Fees, Annuities, Offices, Goods, Chattels, Wares, Merchandizes and Debts, in such manner and form, as the same ought, and might have been, if the persons herein declared, described, or expressed to be Bankrupts, had been by the said Statutes, or either of them, described to be Bankrupts, to all intents and purposes whatsoever.

And be it enacted by the authority,

rity aforesaid, That the same Orders, benefits and remedies, which are, and be provided and limited by this present Act, against any Bankrupts, in, or by this Act declared, described, or expressed to be Bankrupts, or for, or concerning his, her, or their Lands, Tenements, Hereditaments, Fees, Annuities, Offices, Goods, Chattels, Wares, Merchandizes and Debts, or any of them, or the discovery of them, or any of them, shall from henceforth be had, pursued, taken and expounded against such person and persons, as are declared or expressed to be Bankrupts, by the said former Acts of Parliaments, or either of them, and against his, her, and their Lands, Tenements, Hereditaments, Fees, Annuities, Offices, Goods, Chattels, Wares, Merchandizes and Debts, in such manner and form, as the same ought and might

might have been, if the persons in the said former Statutes, or either of them described to be Bankrupts, had been mentioned and described to be Bankrupts, in, and by this present Act.

And whereas by the former Laws, the Commissioners appointed, have power to examine the Bankrupt himself, and such person or persons, as are suspected to have, or detain of the estate, goods or chattels of the Bankrupts, but some doubt hath been made whether the Commissioners have power to examine the wives of the Bankrupts touching the same, by reason whereof the Bankrupts wives do dayly conceal, and convey away, and cause to be conveyed away much part of their husbands moneys, wares, goods, merchandize and other estate, to person or persons unknown to any, but such wives, by reason whereof much of the

Bank-

Bankrupts estate is concealed, and detained from the Creditors.

For clearing therefore the said doubt, and avoiding the inconveniences aforesaid, Be it declared and enacted by the authority aforesaid, That after such time, as any person shall by the said Commissioners, executing the said Commission, or the greater part of them, be lawfully adjudged or declared to be a Bankrupt, the said Commissioners executing such Commission, shall have power and authority to examine upon oath, the wife and wives of all, and every such Bankrupt, for the finding out, and discovery of the estate, and estates, goods, & chattels of such Bankrupt, or Bankrupts, concealed, kept or disposed of, by such wife or wives, in their own person or persons, or by their own act or means, or by any

any

any other person or persons. And that she and they, the said wife and wives, shall incur such danger and penalty for not coming before the said Commissioners, or for refusing to be sworn and examined, or for not disclosing the truth upon her or their examination, or examinations, as in, and by the said former Laws, or either of them is already made, and provided against any other person, or persons in like cases.

And be it further enacted by the authority aforesaid, That if any Bankrupt shall upon his, or her examination, or examinations to be taken before the said Commissioners, executing the said Commission, be found fraudulently, or deceitfully to have conveyed away his, or her Goods, Chattels, Lands, Tenements, Offices, Fees, Rents or Annuities, or other Estate, or any part there-

thereof, to the value of twenty pounds or above, to the end and purpose to hinder the execution of this Statute, or of any other the aforesaid Statutes, or thereby to defraud, delay, or hinder his or her Creditors of the same, and shall not upon his or her examination discover unto the said Commissioners, and (if it lie in his or her power) deliver unto the said Commissioners, all that estate, Goods, and Chattels, so fraudulently, and deceitfully conveyed away, as aforesaid, or by him or her, his or her means, kept or detained from the said Commissioners, or that cannot make it appear unto the said Commissioners that he or she hath sustained some casual loss, whereby he or she is disabled to pay, what he or she then owed, shall or may be indicted for such fraud or abuse, at the Assises or general Sessions, to be holden before

before the Judges of Assise, or Justices of the Peace of the County or place, where he or she shall become Bankrupt: And if upon such Indictment or Indictments, the Bankrupt be thereof convicted, he or she so convicted, shall be set upon the Pillory in some publike place, for the space of two hours, and have one of his or her ears nailed to the Pillory, and cut off.

And for that some doubt is conceived, whether the Commissioners in case of resistance, have power by the former Laws, to break open, or cause to be broken open, the House or Houses of such Bankrupts, which if they have not, the remedies by the former Laws given, will be to little effect: Be it therefore enacted, That in the execution of the said Commission, it shall be lawful, to, and for the said Commissioners, or the greater part of them,

them, or any other person or persons, Officer or Officers, by them, or the greater part of them, to be deputed and appointed by their Warrant or Warrants, under their hands and seals, to break open the House or Houses, Chambers, Shops, Warehouses, Doors, Trunks or Chests of the said Bankrupt, where the said Bankrupt, or any of his or her Goods or Estate, shall be, or reputed to be, and to seize upon, and bind the body, Goods, Chattels, ready Money, and other estate of such Bankrupt, as by the said former Laws are limited and appointed, whether it be by imprisonment of his or her body, or otherwise, as to the said Commissioners or the greater part of them, shall be thought meet.

And for the better division and distribution of the Lands, Tenements, Hereditaments, Goods,

Chattels, and other Estate of such Bankrupt, to, and amongst his or her Creditors, Be it enacted that the Commissioners, or the greatest part of them, shall, and may examine upon oath, or by any other ways or means, as to them shall seem meet, any person or persons for the finding out, and discovery of the truth, and certainty of the several debts due, and owing, to all such Creditor and Creditors, as shall seek relief by such course of Commission to be sued forth, as aforesaid: And that all and every Creditor and Creditors, having security for his, or their several Debts, by Judgment, Statute, Recognizance, Specialty with penalty or without penalty, or other security, or having no security, or having made Attachment in London, or any other place, by vertue of any custome there used, of the Goods and Chattels

tels of any such Bankrupt, whereof there is no execution or Extent served and executed, upon any the Lands, Tenements, Hereditaments, Goods, Chattels, and other estate of such Bankrupt, before such time, as he or she shall, or do become Bankrupt, shall not be relieved upon any such Judgment, Statute, Recognizance, Specialty, Attachments, or other Security, for any or more than a ratable part of their just and due debts, with the other Creditors of the said Bankrupt, without respect to any such penalty, or greater sum contained in any such Judgment, Statute, Recognizance, Specialty with Penalty, Attachment or other Security.

And be it further enacted, that if it shall happen, any the Lands, Tenements, Goods, Chattels, Debts, or other estate of any Bankrupt, to be

tended, after such time as he, or she is become a Bankrupt, by any person or persons, under colour or pretence, of his or their being an Accomptant, or any way indebted unto our Sovereign Lord the Kings Majesty, his Heirs or Successors, that then it shall be lawful, to, and for the said Commissioners, to examine upon oath whether the said Debt were due to such Debtor or Accomptant, upon any bargain or contract originally made, betwixt such Accomptant, and the said Bankrupt, the said Debtor or Accomptant, and his, or their servants: And if such bargain or contract was originally made, to, and with any other person or persons, then the said Debtor or Accomptant, or for the use and trust of any other person or persons, then it shall and may be lawful, to and for the said Commissioners, or the greater

part

part of them to order and dispose of all such Land, Tenements, Hereditaments, Goods, Chattels, and Debts so extended, as aforesaid, to and for the use of the Creditors, which shall seek relief by the said Commission; And that the order and disposition of the said Commissioners, or the greater part of them, shall be good and available against the said extent, and against all persons claiming, from, by, or under the said extent: And that such person and persons, to whom the said Lands, Tenements, Goods and Chattels so extended, shall be bargained, sold, granted, or assigned by the Commissioners aforesaid, or the greater part of them, shall have good remedy, to have, demand, and recover the same, against such person and persons, who shall detain the same: And for that it often falls out, that many persons

before they become Bankrupts, do convey their Goods to other men, upon good consideration, yet still do keep the same, and are reputed the owners thereof, and dispose the same as their own.

Be it enacted, that if at any time hereafter, any person or persons shall become Bankrupt, and at such time as they shall so become Bankrupt, shall by the consent and permission of the true owner, and proprietary, have in their possession, order, and disposition, any Goods, or Chattels, whereof they shall be reputed owners, and take upon them the sale, alteration, or disposition, as owners, that in every such case, the said Commissioners, or the greater part of them, shall have power to sell and dispose the same, to, and for the benefit of the Creditors, which shall seek relief by the said Commission

mission, as fully as any other part of the estate of the Bankrupt: and for the better payment of debts, and discouraging men to become Bankrupts:

Be it further enacted, that the said Commissioners, or the greater number of them, shall have power by vertue of this Act, by deed indented, and enrolled within six moneths after the making thereof, in some of his Majesties Court of Record at Westminster, to grant, bargain, sell and convey any Mannors, Lands, Tenements, or Hereditaments, whereof any Bankrupt is, or shall be in any ways seized of any estate, in tail, in possession, reversion or remainder, and whereof no reversion, or remainder is, or shall be in the Kings Majesty, his Heirs, or Successors, of the gift or provision of his Majesty, his Progenitors, his Heirs, or Successors, to any person or per-

sons, for the relief and benefit of the Creditors of all such Bankrupts; and that all and every such grants, bargains, sales, and conveyances shall be good and available in the Law, to such person or persons, and their heirs, against the said Bankrupts, and against all and every the Issues of the body of such Bankrupts, and against all, and every person and persons, claiming any estate, right, title, or interest, by, from, or under the said Bankrupts, after such time as such person shall become Bankrupt, and against all and every other person and persons whatsoever, whom the said Bankrupt by common recovery, or other ways or means might cut off, or debar from any remainder, reversion, rent, profit, title or possibility, into, or out of any the said Manors, Lands, Tenements, or Hereditaments.

And be it further enacted, That if any person that now is, or hereafter shall become a Bankrupt, have heretofore granted, conveyed, or assured, or shall at any time hereafter, grant, convey, or assure any Lands, Tenements, Hereditaments, Goods, Chattels, or other estate, unto any person or persons, upon condition, or power of redemption, at a day to come, by payment of money, or otherwise, That it shall and may be lawful, to, and for the said Commissioners, or the greater part of them, before the time of the performance of such condition, to assign and appoint, under their hands and seals, such person or persons, as they shall think fit, to make tender or payment of money, or other performance, according to the nature of such condition, as fully as the Bankrupt might have done; and that the said Commissioners, or

the greater part of them, shall after such tender, payment, or performance, have power to sell, and dispose of such Lands, Tenements, Hereditaments, Goods, and Chattels, and other estates so granted, conveyed, or assured upon condition, to, and for the benefit of the Creditors, as fully as they may sell or dispose of any the estate of the Bankrupt.

Provided further, that no Purchasor, for good and valuable consideration, shall be impeached by vertue of this Act, or any other Act heretofore made against Bankrupts, unless the Commission to prove him, or her a Bankrupt, be sued forth against such Bankrupt within five years after he, or she shall become a Bankrnpt.

Provided further, and be it enacted by the Authority aforesaid, that this Act, and all other Acts of Parliament, heretofore made

made against Bankrupts, shall extend to Strangers born, as well Aliens, as Denizens, as effectually, as to the natural born Subjects, both to make them subject to the Laws as Bankrupts, as also to make them capable of the benefit or contribution, as Creditors by those Laws. Stat. 34 H. 8. 4. 13 El. 7. 1 Jac. 15.

Stat. 14 Car. 2. *Chap.* 24.

Whereas divers Noblemen and Gentlemen, not bred up in Trade, have notwithstanding put great Stocks into the East-India and Guiny Company, it is declared that no persons Adventurers for putting in Money or Merchandise into the said Companies, or for adventuring or managing the Fishing, called the Royal Fishing Trade, shall be taken or reputed a Merchant or Trader within any Statutes for

Bank-

Bankrupts, or be liable to the same.

Provided that persons trading and trafficking in any other way or manner than the said Companies or Fishing shall be liable to the Commission of Bankrupts.

A Verdict and Judgment against Sir Jo. Wollaston as a Bankrupt for trading in the East India Company reversed and made void. Provided, not to avoid any sale or disposition of his lands or goods made by vertue of the Commission of Bankrupts.

To the Right Honorable, &c.

IN moſt humble manner complaining, ſheweth unto your Lordſhip your daily Orators, *T. B.* of *A.* in the County of *D.* Gent. and *W. P.* of *C.* in the County of *E.* Eſq; as well for themſelves, as for all others the Creditors of *R. D.* of the Pariſh of *M.* in the City of *London* Merchant, That whereas the ſaid *R. D.* uſing and exerciſing the Trade of Merchandize, by way of Bargaining, Exchange, Bartering and Cheviſance, ſeeking his Trade of living by buying and ſelling, upon good and juſt cauſes, for Wares and Merchandizes to him ſold and delivered, and alſo for ready money to him lent, being indebted to your Orators, and others his Creditors in divers and ſeveral ſums of money, amounting in the whole to

the

the ſum of *&c.* and upwards; of late, that is to ſay, about the Moneth of *November* laſt did become Bankrupt, within the ſeveral Statutes lately made againſt Bankrupts, to the intent to defraud and hinder your ſaid Orator, and all other his Creditors of their juſt Debts and Duties to them due, and owing (*viz.*) within the Statute made in the Parliament begun and holden at *Weſtminſter* the ſecond day of *April* in the *thirteenth* year of the Reign of our late Sovereign Lady Queen *Elizabeth* concerning Bankrupts: and within the Statute made in the Parliament begun and holden at *Weſtminſter* aforeſaid, the nineteenth day of *March* in the firſt year of the Reign of our late Sovereign Lord King *James* of *England*, *France*, and *Ireland*, and of *Scotland* the ſeven and thirtieth, Intituled, *An Act for the better relief of the Creditors againſt ſuch as ſhall become*

come Bankrupts; as alſo within the Statute made in the Parliament begun and holden at *Weſtminſter* the nineteenth day of *February* in the one and twentieth year of the Reign of our ſaid late Sovereign Lord King *James* of *England*, *France*, and *Ireland*, and of *Scotland* the ſeven and fiftieth, Intituled, *An Act for the further deſcription of a Bankrupt, and relief of the Creditors againſt ſuch as ſhall become Bankrupts*, or within ſome or one of them: In tender conſideration whereof, may it pleaſe your Lordſhip to grant unto your Orators his Majeſties moſt gratious Commiſſion to be directed to ſuch and ſo many wiſe, honeſt, and diſcreet perſons as your Lordſhip ſhall ſeem meet, authorizing them thereby, not only concerning the ſaid Bankrupt, his Body, Lands, Tenements, Free-hold and Cuſtomary Goods, Debts, and other things whatſoever, but alſo concerning

cerning all other perſons which by concealment claim, or otherwiſe do or ſhall offend touching the premiſes, or any part thereof, contrary to the true intent and meaning of the ſame Statutes. To do and execute all and every thing and things whatſoever, as well for, and towards ſatisfaction and payment of the ſaid Creditors, as towards and for all other intents and purpoſes, according to the Ordinance and Proviſion of the ſame Statutes:

And your Orators ſhall pray, &c.

CHARLS

CHARLES *the Second by the Grace of God, King of* England, Scotland, France, *and* Ireland. *Defender of the Faith, &c. To our truſty and well-beloved* A. B. *of* E. *in the County of* D. *Gentl.* S. M. *of* H. *in the County of* W. *Eſq. Greeting. Whereas we are informed that* R. D. *of* L. *in the City of* London *Merchant, uſing and exerciſing the Trade of Merchandiſe by way of Bargaining, Exchange, Bartering and Cheviſance, ſeeking his Trade of living by buying and ſelling, did become Bankrupt within the ſeveral Statutes made againſt Bankrupts, to the intent to defraud and hinder* T. B. *of* A. *in the County of* D. *Gent. and* W. P. *of* C. *in the County of* E. *Eſq; & others his Creditors of their juſt Debts and Duties to them due, and owing, We minding the due exe-*

cution as well of the Statute touching Orders for Bankrupts in the Parliament begun and holden at Weſtminſter *the ſecond day of* April *in the thirteenth year of the Reign of our dear Siſter* Elizabeth *late Queen of* England *made and provided: As of the Statute made in the Parliament begun and holden at* Weſtminſter *aforeſaid, the nineteenth day of* March, *in the firſt year of the Reign of our late dear Grandfather King* James *of* England, France, *and* Ireland, *and of* Scotland *the ſeven and thirtieth, Intituled,* An Act for the better relief of Creditors againſt ſuch as ſhall become Bankrupt: *And alſo of the Statute made in the Parliament begun and holden at* Weſtminſter *aforeſaid, the nineteenth day of* February *in the one & twentieth year of the Reign of our ſaid late dear Grandfather King* James *of* England, France, *and* Ireland, *and of* Scotland *the ſeven and fiftieth, Intituled,* An Act for the further

ther deſcription of a Bankrupt, and relief of Creditors againſt ſuch as ſhall become Bankrupt, *upon truſt of the wiſdoms, fidelities, diligence, and provident circumſpection which we have conceived in you do by theſe preſents name, aſſign, appoint, conſtitute, and ordain you our ſpecial Commiſſioners, giving full power and Authority, unto you, four or three of you, whereof you the ſaid* A. B. *to be one according to the ſame Statutes, and every, or any of them not only concerning the ſaid Bankrupt his Body, Lands, Tenements, Free-hold, and Cuſtomary Goods, Debts, and other things whatſoever, but alſo concerning all other perſons which by concealment, claim, or otherwiſe do, or ſhall offend touching the premiſes, or any part thereof contrary to the true intent and meaning of the ſame Statutes, or any of them, to do and execute all and every thing and things whatſoever, as well for and towards ſatisfaction and pay-*

ment of the ſaid Creditors, as towards, and for all other intents and purpoſes according to the Ordinances and proviſion of the ſaid Statutes, Willing and commanding you, four, or three of you whereof you the ſaid A.B. *to be one, to proceed to the execution and accompliſhment of this our Commiſſion according to the true intent and meaning of the ſame Statutes, with all diligence and effect, as our ſpecial truſt is in you. Witneſs Our ſelf at* Weſtminſter *the, &c.*

What

What a Bankrupt is, and his Deſcription.

1. FIrſt in General, the word *Bankrupt*, is derived of the French word *Banqueroutte*, which ſignifieth a breaking, or becoming a Bankrupt: and *Banquerouttier*, ſignifieth a Bankrupt; and *faire Banqueroute*, is as much as *ſolum vertere*, with the Romans: the compoſition of the French word is from *Banque*, which is as much as *Menſa* in Latine, and *route*, which is the ſame with *Veſtigium*, taken for a ſign or mark left in the place from whence a Table had been removed; in the ſame ſence as we in Engliſh ſay a *Cartroutte*, *viz.* the remaining impreſſion of a Cart-wheel. The Original ſeemeth to be taken from the Roman *Menſarii*, who had their *Tabernas* and *Menſas*: (*Tabernæ* being taken for Shops, ſo called *a tabulis, quibus claudebantur*) and theſe were ſeated in pub- His Name.

lique places, from which when they were disposed to slip away and delude their Creditors, they left only of these Shops some *Vestigia*, or signs behind them: *Vide Cowel, & Minshaw verbo Bankrupt.*

His description.

(2.) In the Statute of 34 *H.* 8. *cap.* 4. a Bankrupt is thus described: *viz. Whereas divers and sundry persons, craftily obtaining into their hands great substance of other mens goods, do suddenly flie into parts unknown, or keep their Houses, not minding to pay, or restore unto any of their Creditors their Debts and Duties, but at their own wills and pleasures, consume the substance, (obtained by credit) of other men, for their own pleasures and delicate living, against all equity and good Conscience.*

(3.) Now more particularly, A Bankrupt is set forth and described in the several Statutes made against Bankrupts, First, by his Qualitie and Occupation: Secondly, by his Demeanors and Carriage.

His Quality.

(4.) For the first, as to his Quality and Occupation, he is thus described by 13 *El. chap.* 7. and 1 *Jac. chap.* 15. *If any Merchant, or other person, using or exercising the trade of Merchandizing,*

by

by way of Bargaining, Exchange, Rechange, Bartry, Chevisance, or otherwise in gross, or by retail, or seeking his or their Trade of living by buying and selling, and being a Subject born of this Realm, or of any the Queens Dominions, or Denizen, &c. Which Statute as appears extends only to Subjects born, or Denizens: but the Statute of 21 *Jac. cap.* 19. extends likewise to strangers; at the later end of which Statute there is this Proviso, *viz. Provided further, and be it enacted, &c. that this Act and all other Acts of Parliament, heretofore made against Bankrupts, shall extend to Strangers born:* as well aliens, as Denizens, as effectually as to the natural born Subjects, both to make them subject to the Laws as Bankrupts, as also to make them capable of the benefit or contribution, as Creditors by those Laws. Subjects. Strangers.

(5.) A Shoo-maker may be a Bankrupt, because he lives by buying of Lether, and selling of it again in Shoos. *Crook part* 3. *fol.* 31. *Cramp* and *Barn.* An Inn-keeper is not within the Statutes of Bankrupts, for although he buy provision to be spent in his house, and utters it, yet he doth not properly sell it, Shoomaker.

but utters it at such Rates, as he thinks to be reasonable gains, and the Guests do not take it, or contract for it, at a certain price; and if he take excessive prices, he is indictable; and Inn-keepers have many times Hay, Corn, *&c.* of their own growth, and their gains arise by the attendance of their servants, and furniture of their House and Rooms for the accomodation of his Guests. *Crook 3 part. fol. 549. Crisp vers. Prat.*

(6.) The like I suppose may be said of a Taylor, for his Trade is not by buying and selling, but by making of the Garment, and in what he buyeth, he doth it, but as a servant to his Customers, and ought not to take any more than he lays out.

(7.) Sir *John Wolstenholm*, one of the East-India Company, a person of 3000 *l.* lands a year; yet in regard he had a stock in that Company, and received the proceed thereof, he was held to be within the Statutes of Bankrupts, although he did not get the greatest part of his living by buying and selling; notwithstanding the words of the Statute: [*Seeking his or their Trade by buying and selling*:] for the Statute shall be expounded beneficially for the Creditors:

and

and it is not the Quality of a mans Perſon, or the greatneſs of his Eſtate, that exempts him out of the Statute. *Hughs Abridgment, fol.* 315. *Caſe* 7.

(8.) A Feme covert, ſole Merchant in *London* (being ſuch an one as driveth one Trade, and her Husband another) by the cuſtome of that City may bring an action without her Husband, and be ſued without her Husband, 1 *E.* 4. *pag.* 13. and if her Husband be named with her in an action brought againſt her, it is but for conformity: *contra*, if ſhe exerciſe the ſame Trade with her Husband, although ſhe buy and ſell, *&c.* for it ſhall be intended as ſervant to her Husband: *Croke* 3. *pag. fol.* 69. alſo a feme covert ſole Merchant, may give away and diſpoſe of her goods without her Husband, 21 *H.* 7. 18. *pag.* 29. A Feme covert ſole Merchant may be a Bankrupt, for if the Cuſtom of *London* doth create in her a diſtinct property from her Husband in the goods ſhe deals in: by the ſame reaſon ſhe alone may become a Bankrupt, within the Statute, and her husband not included, and her husband be alſo a Bankrupt, and ſhe not thereby included. Yet Quere, for the wife is *ſub poteſtate viri*, by the Law of God, and Nature, from which

no

no cuſtom can exempt her; and her huſband when he pleaſe may determine her ſole Merchantſhip; and there it may ſeem reaſonable, that his being a Bankrupt ſhould involve her eſtate, and that her being a Bankrupt ſhould involve his Eſtate, becauſe it is by his permiſſion and privity ſhe drives a diſtinct Trade. *Vide Stones Lecture*, 162. who is of opinion that if ſhe abſent her ſelf, *&c.* and her husband be *non-ſolvent*, both will become Bankrupts, for it was his folly to ſuffer her to be ſole Merchant.

(9.) A Merchant gives over his trading; and ſeven years after becomes *non-ſolvent*, for money he took up, while he was a Merchant, he ſhall be a Bankrupt: *Stones Lecture, fol.* 7. *contra*, for Debts contracted ſince he gave over Trading; ſo for Debts due before he gave over trading, and continued upon new ſecurity taken ſince he gave over his trading. *Ibid.*

(10.) A Grafier that hireth grounds and buyeth Cattel and feedeth them, and then ſells them again, may be a Bankrupt, and is within the Statutes of Bankrupts, ſaith *Stone*: *contra*, if he graſe his own Free-hold: *Stones Lecture* 165. Yet Quere, of the laſt point, for if he graſe

graſe them in his own Free-hold, yet notwithſtanding he ſeeketh his Trade of living by buying and ſelling, though not wholly by buying and ſelling. *Vide Sect.* 7.

(11.) A Clothier that ſets poor people on work, but himſelf doth only buy the wool, and ſell the Cloth, may be a Bankrupt; *contra*, if he work himſelf, and keepeth Looms and ſervants: ſaith Mr. *Stone* in his *Lecture*, *fol.* 165. but Quere of the laſt point; why he may not (although he work himſelf) be within the Statutes of Bankrupts, as well as a Shoo-maker who buyeth Lether and makes it up into Shoos, and ſells them: for a Clothier buyeth Wool, and makes it up into Cloth, and ſells it. *Vid. Sect.* 5. A Scrivener may be a Bankrupt, by 21 *Jac. chap.* 19.

(12.) Thirdly, a Bankrupt is ſet forth and deſcribed by his Demeanour, or Carriage; which is, 1. his withdrawing himſelf: as it is in 34 *H.* 8. *cap.* 4. *Whereas divers and ſundry perſons craftily obtaining into their hands great ſubſtance of other mens, do ſuddenly fly into parts unknown, or keep their houſes*: and by 13 *El. cap.* 7. he is ſaid to be ſuch an one as ſhall depart the Realm, or begin

His Demeanour.

to

to keep his or their House, or Houses, or otherwise, &c.

(13.) A Merchant or Trader, absents himself for fear of being arrested, by a Writ *de excommunicato capiendo*, so if a Decree in Chancery be made against him to make a Conveyance, and he withdraws himself for fear of being attached for not performing of the Decree: It seems in neither of these cases doth his withdrawing make him a Bankrupt; *contra*, if the substance of the Decree had been for payment of Money, because in such case his withdrawing had been for Pay, to defraud, or delay the payment of his Debt: *Stones Lecture*, *fol.* 10. If he depart the Realm, and long time after his departure becomes *non-solvent*, his absenting himself in such case brings him within the Statutes of Bankrupts, *Ibid.* 133.

(14.) Secondly, Keeping of their Houses: withdrawing themselves, and keeping their houses, as it is in 13 *Eliz. cap.* 7. and 1 *Jac. cap.* 15. If a Trader upon notice of Process issued forth against him, keeps his house to secure himself from the arrest; and after goeth forth again; and then upon like notice keeps his house, and then again goeth forth:

forth : this bringeth him not within the Statutes of Bankrupts ; becauſe he uſes to go at large, and his Policie will not always prevent the ſecuring of Proceſs on him, for he may be met withal unwittingly one time or other. *Crook, part* 3. *fol.* 13. *pag.* 6. If one that hath no houſe, ſojourns ſometimes at one place, and ſometimes at another ; yet if he appears not abroad as formerly, nor can be found as formerly, this is an abſenting himſelf (as is conceived) within the Statute of 13 *El. chap.* 7. where the words are, *or otherwiſe abſents himſelf* : the ſame words are in 1 *Jac. cap.* 15.

(15.) Thirdly, taking of Sanctuary, as it is in 13 *El. cap.* 7. and 1 *Jac. cap.* 15. There be no Sanctuaries now in *England* ; therefore all priviledged places where the Kings Officers cannot come, is within theſe Statutes, as *Stone* conceives in his *Lecture, fol.* 171.

(16.) Fourthly, Such as ſhall ſuffer themſelves willingly to be arreſted : the words of the Statute of 13 *El. cap.* 7. are, *Or ſuffer him or her ſelf willingly to be arreſted for any Debt, or other thing not grown, or due for moneys delivered, wares ſold, or any other juſt or lawful cauſe* : and by 1 *Jac. chap.* 15. It is, *Or*

ſhall

shall willingly suffer him, or her self to be arrested for any Debt, &c. ut supra: and then adds, *or shall willingly, or fraudulently procure himself or her self to be arrested, or his or goods, money, and chattels to be attached or sequestred, &c.*

(17.) A Merchant *&c.* hath an impropriat Rectory; the Quire is not repaired, the Tithes are sequestred, it is no sequestration within the said Statute, for this is not his immediate procuring, although his default in not repairing the Church, might be a mean to procure it: *Stones Lecture* 172.

(18.) Fifthly, By suffering himself or her self to be outlawed, *&c.* 13 *El. cap.* 7. 1 *Jac. cap.* 15. Quere, if the party reverse the outlawry before the Commission of Bankrupt sued forth; whether his being out-lawed be within the Statute; and I conceive (with submission) it is not within the Statute; for I suppose the reason of this Clause may be, because the party by the out-lawry, intitleth the King to his goods, *&c.* so that his end in so doing may be conjectured to deceive his Creditors, which cannot be intended when he after reverseth it: By *Stone* one out-lawed in *Ireland*,

it:

is not thereby a Bankrupt here, because the Record is not pleadable here. *fol.* 172.

(19.) Sixthly, Yeelding himself or her self to prison. 13 *El. cap.* 7. 1 *Jac. cap.* 15. This I conceive is to be intended a voluntary yeelding, and not when a man is imprisoned for non-payment of a Fine, *&c.* or any refractory carriage; for although the Act which causeth the imprisonment be voluntary, yet the imprisonment it self is involuntary; but Quere, whether it be not a detention for Debt, within the following clause, mentioned hereafter in the next Section: for I suppose the Fine, after it is once imposed, becomes a Debt; but yet it may not be within the meaning of the Acts, which were made for the relief of Creditors, only who had intrusted the party offending, and not for a Fine judicially imposed for some contempt.

(20.) Seventhly, Or being arrested for Debt, shall after his or her arrest lie in prison six moneths or more upon that arrest; or upon any other arrest, or detention in prison for Debt, and lie in prison six moneths upon such arrest or detention, *&c.* 1 *Jac. cap.* 15. and in 21 *Jac. cap.* 19. It is thus; *Or being arrested*

for

for Debt, ſhall after his or her arreſt lie in priſon two moneths or more, upon that or any other arreſt, or detention in priſon for Debt. 21 *Jac. cap.* 19. Suppoſe he be arreſted upon a Bond before the day of payment; for by the cuſtom of *London* a Creditor may arreſt a Debtor there before the day of payment to find ſureties; *Cook, lib.* 8. 126. a. *City of Londons caſe*: and lie in priſon two moneths, *&c.* I conceive this caſe to be within the Statutes, for the Debt ariſeth upon the obligation, and is a Debt preſently upon ſealing and delivery of the Deed; and I conceive the action for which he is arreſted muſt be an action of Debt: although the end of that arreſt is not to inforce the payment of the Debt, but to find ſureties in caſe the Creditor fears the Debtor to be too weak for his ingagement; and in caſe the Debtor upon ſuch arreſt finds not ſureties, his body is to continue in priſon, as a pledge for the Debt; like Law I conceive in caſe of a ſingle Bill, or a Debt ariſing upon a contract; for it is a Debt preſently and before the day of payment. *Vide Crook, part* 2. *fol.* 300. *Tynam verſ. Bridges.*

(21.) Eighthly, Or being indebted to any perſon or perſons in the ſum of

100 *lib.*

100 *lib.* or more, ſhall not pay, or otherwiſe compound for the ſame within ſix moneths next after the ſame ſhall grow due, and the Debtor be arreſted for the ſame, or within ſix moneths after an original Writ ſued out to record the ſaid Debt, and notice thereof given unto him, or left in writing at his or their dwelling houſe, or laſt place of abode: 21 *Jac. cap.* 19.

(22.) Ninthly, Or being arreſted for the ſum of 100 *lib.* or more of juſt debt or debts, ſhall at any time after ſuch arreſt eſcape out of priſon, or procure his inlargement by common or hired bayl. And in the ſaid caſes of Arreſt, † or lying in priſon for ſuch Debt or Debts, or getting forth by common or hired bail, he ſhall be judged a Bankrupt from the time of his firſt arreſt. 21 *Jac. cap.* 19.

† Mentioned in 21 Jac. cap. 19.

(23.) Tenthly, Or ſhall either by himſelf, or others by his procurement, obtain any protection or protections; other than ſuch perſon or perſons as ſhall be lawfully protected by the priviledge of Parliament. 21 *Jac. chap.* 19.

24.) Eleventhly, or ſhall prefer or exhibit unto his Majeſty, his Heirs or Succeſſors, or unto any of the Kings

Courts any Petition or Petitions, Bill or Bills against his or her Creditor or Creditors, or any of them, thereby desiring or endeavouring to compell or inforce them, or any of them, to accept of less than their principal and just Debts, or to procure time, or longer daies of payment, than was given at the time of their original contracts, 21 *Jac. cap.* 19.

(25.) Twelfthly, Or shall make or cause to be made any fraudulent grant or conveyance of his, her, or their Lands, Tenements, Goods or Chattels, to the intent, or whereby his, her, or their Creditors being subjects born, * shall or may be defeated or delayed for the recoverie of their just and true debts; as it is in 1 *Jac. cap.* 15.

* Vid. sect. 4 Where it appears, that strangers are also included.

(26.) In all which cases before recited, the Person offending is declared to be a Bankrupt, within the said Statutes: And the end or final cause of all such his demeanor, is expres'd by 13 *El. cap.* 7. to be to defraud the Creditors of their just Debts, *&c.* and by 1 *Jac. cap.* 15. it is thus, To the intent that his, her, or their Creditors, being subjects born, shall or may be defeated or delayed from the recoverie of their just and true Debts: *ibid.* And by 21 *Jac. cap.* 19. All the said

ſaid Statutes ſhall extend as well to Aliens and Denizens, as to Subjects born.

The puniſhment, and proceedings againſt Bankrupts, by 34 H. 8. Cap. 4.

(27.) *Nota*, By 21 *Jac. cap.* 19. it is enacted, that all Statutes and Laws formerly made againſt Bankrupts, and for relief of Creditors, ſhall be in all things largely and beneficially conſtrued for relief of the Creditors.

(28.) Firſt, in General, He ſhall be accompted a Bankrupt to all intents and purpoſes; 13 *El. cap.* 7. 21 *Jac. cap.* 19. 1 *Jac. cap.* 15. and being a Bankrupt, he is preſently diſabled, as to the diſpoſal of any part of his Eſtate, although it be to ſome of his Creditors; for he is utterly diſcredited by his becoming a Bankrupt, and the Law will not truſt him with the diſtribution of his Goods, *vide Coke, lib.* 2. 26. *a*: Caſe of Bankrupts. In General.

(29.) Secondly, more Particularly, the Bankrupts are to be proceeded againſt by Perſons immediately authorized by Act of Parliament, or mediately: the perſons immediately authorized are ſet forth by 34 *H.* 8. *cap.* 4. to be the Lord Chancellor or Lord Keeper for In Particular. Touching the Bankrupts Perſon.

the time being, Lord Preſident, Lord Privie-Seal, or other of the Kings moſt Honourable Privie-Counſel, and the Chief Juſtice of either Bench for the time being, or three of them at the leaſt; whereof the Lord Chancellor or Keeper of the Great Seal, Lord Treaſurer, Lord Preſident, or the Lord Privie-Seal to be one; who upon every complaint made to them in writing by any parties grieved, ſhall have power and authority by vertue of the ſaid Act, to take by their wiſdome and diſcretion, ſuch orders and directions, as well with the bodies of the ſaid offendors, whereſoever they may be had, as well in their houſes as elſewhere, by impriſonment of their Bodies, or otherwiſe; as alſo with their Lands, Tenements, *&c.* which they have in Fee-ſimple, Fee-tail, for term of life, term of years, or in the right of their wives; as much as the intereſt, Right and Title of the ſame offenders ſhall extend to or be, and may then lawfully be departed with by the ſaid offenders; and alſo with their moneys, goods, chattels, wares, merchandiſes and debts, whereſoever they may be found or known, *&c.* 34 *H.* 8. *cap.* 4.

(30.) So that the power given by the ſaid Statute, relates either to the perſon or eſtate of the Bankrupt: Firſt, as to his perſon, *viz.* If the offender doth withdraw out of the Kings Dominions, to defraud his Creditors; upon complaint thereof made in writing to the ſaid Lords, having authority as aforeſaid, they ſhall by vertue of the ſaid Act, have power to award Proclamations to be made in ſuch places as to them ſhall be thought meet and convenient; commanding by the ſame ſuch offender, in the Kings name, to return with all convenient ſpeed, into this Realm, and to yield his body before the ſaid Lords, or one of them: And if the ſaid perſon, within three moneths, after he ſhall have notice of ſuch Proclamation; or, ſo ſoon after as he conveniently may, do not repair and yield his body as aforeſaid; That then the body of all and every ſuch offender and offenders, ſhall be adjudged, taken and deemed, to all intents and purpoſes, out of the Kings protection; and his Goods, Chattels, Lands, Tenements, and Debts, ſhall be by the order and diſcretion of the ſaid Lords, imployed and diſtributed amongſt the offenders Creditors equally, *&c.* 34 *H.* 8. *cap.* 4.

Touching the Banrupts eſtate.

(31.) Secondly, Touching the offendors eſtate obſerve (more particularly) firſt the power given to the Lords by 34 *H.* 8. for the diſcovering and obtaining of it : Secondly, for their diſpoſal and ordering of it.

The diſcovery of it.

(32.) Firſt, for the diſcovery and obtaining of it. The effect of that Statute is, That if, after any ſuch Act or offence committed, and complaint thereof made to the Lords as aforeſaid, by any party grieved concerning the premiſes, who knowing, or ſuſpecting any of the goods, chattels, wares, merchandizes, or debts of ſuch offendors, to be in the cuſtody, uſe, or poſſeſſion, of any perſon or perſons; or any perſon or perſons to be indebted to any ſuch offendor or offendors, do make relation thereof to the ſaid Lords, then they are impowred by the ſaid Statute, to ſend for, and convent before them, ſuch perſon or perſons ſo known or ſuppoſed to have any ſuch goods, wares, *&c.* in their cuſtody, or to be indebted to the offendor or offendors; and upon their appearance, to examine them, and every of them; as well by their Oaths, as otherwiſe, for and upon the ſpecialty, certainty, true declaration, and knowledge, of all and ſingular

lar ſuch goods, wares, debts, &c. as be ſuſpected to be in his, or their cuſtody, uſe, &c. And if the perſon ſo examined, do not plainly diſcloſe the whole truth of ſuch things whereof he ſhall be examined touching the premiſes; then every ſuch perſon or perſons ſo examined, and not declaring the plain and whole truth, upon ſuch proof thereof made, before the ſaid Lords, as they ſhall judge ſufficient in that behalf, ſhall loſe and forfeit double the value of all ſuch goods, wares, &c. ſo concealed, to be levied by the ſaid Lords, by ſuch ways and means as they ſhall think fit, the ſame to be diſtributed to the Creditors, in ſuch manner as the Bankrupts Eſtate. 34 *H.* 8. *cap.* 4.

(33.) And that if any perſon or perſons do fraudulently by covin or colluſion demand any debt, or other thing by writing or otherwiſe, of ſuch offendor or offendors, other than ſuch as he, or they can and do prove to be juſtly due before the ſaid Lords, that then every ſuch perſon or perſons, ſo craftily demanding any ſuch debt, &c. ſhall forfeit the double of what he ſhall ſo claim, &c. to be levied and imployed as aforeſaid.

(24.) So, if the Bankrupt (after he ſhall do thoſe acts, whereby he is declared Bankrupt) ſhall ſuffer fraudulent recoveries againſt him of any debts, goods, *&c.* upon complaint thereof to them made, the Lords are impowred to convent before them the Recoverors; and after ſuch fraud diſcovered the ſaid goods, *&c.* ſo recovered ſhall be chargeable to the Bankrupts debts, and be diſpoſed of to the Creditors (notwithſtanding ſuch Recovery.) 34 *Hen.* 8. *cap.* 4.

Diſpoſal of the Bankrupts eſtate.

(35.) Secondly, Obſerve the power given by that Statute to the Lords, for diſpoſing and ordering of the Bankrupts Eſtate. Firſt, they have power to cauſe the Bankrupts Lands, Tenements, Fees, Offices, Annuities, Goods, and Chattels, Debts, *&c.* to be viewed, rented, and appraiſed. Secondly, To make a ſale of the ſaid Lands, *&c.* or otherwiſe to order the ſame, for the true ſatisfaction, and payment of the ſaid Creditors, rate and rate like, according to the quantity of their debts. Thirdly, And that every direction, order, bargain, ſale, and other things done by the ſaid Lords as as aforeſaid in writing, ſigned with their hands, ſhall be good and effectual

fectual in the Law, to all intents, *&c.* againſt the offenders, their heirs and exetors for ever, as if done and executed by the offendors themſelves. 34 *Hen.* 8. *chap.* 4.

Which Statute of 34 H. 8. *although it be now out of uſe; yet in regard I do not find it actually repealed, I ſuppoſe it will not be thought altogether ſuperfluous to be taken notice of.*

The proceedings againſt and puniſhment of the Bankrupt, by perſons mediately authoriſed by Parliament.

(36.) The next things conſiderable, are the proceedings againſt, and puniſhment of the Bankrupt, by Commiſſioners or perſons mediately authorized by Parliament, wherein take notice, First, of their Commiſſion: and therein obſerve, firſt from whom obtained, the Lord Chancellour of *England*, or Lord Keeper of the Great Seal, for the time being, upon every complaint made unto him in writing, againſt any ſuch perſon or perſons being Bankrupt, ſhall have full power and authority by Commiſſion under the Great Seal, to name and appoint ſuch

Commiſſioners.

Their Commiſſion.

ſuch honeſt and diſcreet perſons, as to him ſhall ſeem meet, *&c.* 13 *Eliz. cap.* 7. Secondly, by whom to be obtained, by the Creditors. Thirdly, when to be obtained, it muſt be within five years after that the party ſhall become a Bankrupt, or elſe it is not to prejudice purchaſers. 21 *Jac. chap.* 19. the words of the Statute are, *Provided that no Purchaſer for good and valuable conſideration ſhall be impeached by vertue of this Act, or any other Act againſt Bankrupts, unleſs the Commiſſion to prove him or her a Bankrupt, be ſued forth againſt ſuch Bankrupt, within five years after he or ſhe ſhall become a Bankrupt.* ibid. Fourthly, The duration of the Commiſſion, it is not determined by the Bankrupts death; for by 1 *Jac. cap.* 15. it is thus enacted, *Provided always, and be it enacted, that if after any Commiſſion of Bankrupts hereafter ſued forth, and dealt in by the Commiſſioners, the offendor happen to die, before the Commiſſioners ſhall diſtribute the Goods, Lands, and Debts of the offendors, or any of them*, by force of the aforeſaid Statute of 13 *Eliz.* and this Statute, or either of them, *That then nevertheleſs the ſaid Commiſſioners ſhall and may in that caſe proceed to execution,*

in,

in, and upon the ſaid Commiſſion, for, and concerning the offendors goods, lands, tenements, hereditaments and debts, in ſuch ſort, as they might have done if the party offendor were living. 1 Jac. 15.

(37.) If ſuch, or ſuch number of the Commiſſioners die, ſo that the reſt cannot proceed; and thereupon a new Commiſſion be granted to other Commiſſioners, they may call the ſurviving Commiſſioner or Commiſſioners before them, to give accompt for ſuch part of the Bankrupts eſtate, whereof the old Commiſſioners made no diſtribution, as perſons who have the Eſtate of the Bankrupts in their hands: *Stones Lecture, fol.* 19. *and* 187.

(38.) Secondly, Note the authority given the Commiſſioners, ſo commiſſionated as aforeſaid, by ſeveral Acts of Parliament: Firſt, as touching the Bankrupt himſelf. Secondly, as touching his Eſtate.

(39.) Firſt, as to the Bankrupt himſelf, by the Statute of 13 *El. chap.* 7. it is thus ſet forth: *And be it enacted, that if any ſuch perſon or perſons, which is, or ſhall be indebted, do of purpoſe withdraw him or themſelves out of, or from his or their uſual manſion houſe or houſes, that then*

To cauſe the Bankrupt to appear.

when upon complaint thereof made to the said Commissioners, the same Commissioners, or the more part of them, shall by vertue and authority of this present Act, have full power and authority to award five Proclamations, to be made in the Queens Name, upon five sundry Market-days, in such places, near the place where such Bankrupt hath most commonly dwelled, or made his abode; commanding him or them by the said Proclamations in the Queens name, to return with all convenient speed, and to yeeld his, or their Body before the said Commissioners, or one of them, at such time and place, as by the said Proclamation shall be appointed: and if the said Person or persons do not according to such Proclamation, repair and yeeld his or their body as aforesaid, that then the body of all and every such offendor or offendors shall be judged, taken, and deemed to all intents and purposes out of the Queens Protection; And that every person and persons, that shall willingly or wittingly, receive, detain, or keep secretly any person or persons so demanded by Proclamation, as is aforesaid, shall suffer such pain of imprisonment of his, or their bodies, or pay such Fine to our Sovereign Lady the Queens Ma-

Proclamations.

Majesty, her heirs, and Successors, as the said Lord Chancellor, or Lord Keeper of the Great Seal, being informed thereof by the Commissioners so to be appointed, as is aforesaid, or the more part of them shall seem meet and convenient, for their said offence or offences. 13 Eliz. chap. 7.

(40.) And by the Statute of 1 *Jac. chap.* 15. The said Commissioners may call before them, or the greater part of them, the said Bankrupt; and if upon lawful warning left in writing, at three several times, at the dwelling place or house where the said Bankrupt, his wife, or family for the most part of his abode did lodge, or remain, within one year next before, he, she, or they became Bankrupt; the said Bankrupt shall not appear before the said Commissioners, or the greater part of them, that then and from thenceforth it shall be lawful for the greater number of the said Commissioners, to appoint to proclaim the said party a Bankrupt, at such publike place, or places where the said Commissioners, or the greater part of them, shall think meet, warning him, her, or them, to appear before them, upon the said Commission at some time appointed; And

Warning left in writing.

Proclamation.

And that if upon five ſeveral Proclamations made in ſome publike place, the party offending, appear not before the ſaid Commiſſioners, and yeeld his, her, or their bodies to them, or ſome of them; the ſaid Commiſſioners or greater part of them, ſhall or may award a warrant to ſuch fit perſon or perſons as they ſhall think meet to apprehend the body and bodies of the ſaid offendor and offendors; and to bring him, her, or them ſo offending before the ſaid Commiſſioners, whereſoever the ſaid party or parties offending may be found in places priviledged, or not, to be examined by the ſaid Commiſſioners, or the greater part of them. 1 *Jac. chap.* 15.

Breaking open houſes &c to take the Bankrupts.

(41.) And by 21 *Jac. chap.* 19. The ſaid Commiſſioners, or the greater part of them, in execution of the ſaid Commiſſion, or any other perſon or perſons by them to be deputed by their warrant or warrants under their hands or ſeals have power to break open the houſe or houſes, Chambers, Shops, *&c.* of the ſaid Bankrupt, where the ſaid Bankrupt, or his goods, *&c.* ſhall be; and to ſeize upon, and order the perſon, *&c.* of ſuch Bankrupt, as by former Laws are appointed, *&c.* 21 *Jac.* 19. And by 13 *Eliz. chap.* 7. The

7. The ſaid Commiſſioners have powet given them, to take order by their diſcretion with the body of the Bankrupt, whereſoever he or ſhe may be had, either in his or her houſes, Sanctuary, or elſewhere, *&c. Ibid.*

(42.) Secondly, Obſerve the powet of the Commiſſioners, as to the eſtate of the Bankrupt; and therein take notice, Firſt, of what eſtate. Secondly, the means for the diſcovery, and obtaining of it. Thirdly, their diſpoſal of it.

Of what Eſtate of the Bankrupts the Commiſſioners may diſpoſe.

(43.) Firſt, Of the Bankrupts real Eſtate: Lands, tenements, and hereditaments, as well Copy-hold, or Cuſtomary-hold, as free-hold, which he or ſhe ſhall have in his or her own right, before he or ſhe became Bankrupt, *&c.* 13 *El. chap.* 7. Real Eſtate.

(44.) It is made by Mr. *Stone* a Quere in his Lecture: That if there be two joyntly, and the one become Bankrupt, and dies, whether his part ſhall be ſold, becauſe the ſurvivor is not in by him. But it ſeems to me, that the Bankrupts part ſhall be ſold, and that there ſhall

ſhall be no ſurvivor in this caſe. Firſt, becauſe the Bankrupts moiety is bound by the Statutes, by his becoming a Bankrupt. Secondly, the Bankrupt had power to ſell the ſame in his life time, and might depart with it, and ſo within the the words of 13 *Eliz. cap.* 7. the words are [*ſuch uſe, intereſt, right or title, as ſuch offendor or offendors that ſhall have in the ſame, which he or ſhe may lawfully depart withal.*] *vide* after *Sect.* 46. Thirdly, by 1 *Jac. chap.* 15. The Commiſſioners after the Bankrupts death, may proceed in execution, in and upon the Commiſſion, for and concerning the offendors lands, tenements, *&c.* in ſuch ſort as if the offendor had been living; which they cannot do in the caſe before, if the ſurvivorſhip take place.

Copy-hold.

(45.) It was agreed by the Juſtices that Copy-holds are within the intent and purview of all the Statutes concerning Bankrupts, and may be ſold by the Commiſſioners; ſome doubt whereof was made, becauſe they are named in one clauſe of 13 *El.* and not in 1 *Jac. chap.* 15. or 21 *Jac. chap.* 19. for the ſame being in the firſt Statute, and the other Statutes being made in further confirmation and approbation thereof, they ought

ought to be expounded *liberally* and ſhall be conſtrued acordingly, to make as ſtrong proviſion, as they may againſt the Bankrupt, *Crook*, 3. *part* 550. *Criſp againſt Prat.*

(46.) And all ſuch Lands, tenements, hereditaments, as ſuch perſon, [*viz.* the Bankrupt] ſhall have purchaſed, or obtained for money or other recompence joyntly with his wife, children, or child, to the only uſe of ſuch offendor or offendors, or ſuch uſe, intereſt, right, or title, as ſuch offendor or offendors, then ſhall have in the ſame, which he or ſhe may lawfully depart withal, 13 *El. cap.* 7. 2. Lands purchaſed joyntly with the wife.

(47.) A man purchaſeth Lands to him, and his wife, and his ſon, and two years after he becomes a Trader; and four years after he becomes a Bankrupt, theſe Lands ſhall not be ſold by the Commiſſioners of Bankrupt, and are out of the meaning of the Statute, for elſe none might know with whom to deal by way of marriage or otherwiſe, when a perſon who is not a Tradeſman, ſettles Lands upon his wife and children, *bona fide*, and after becoming a Tradeſman, and then a Bankrupt, the ſaid Acts of Parliament ſhall overthrow a Conveyance

ſo duly ſetled. *Crook, 3 part. fol. 550. Criſp verſus Prat.*

3. Lands in truſt.

(48.) Lands, tenements, *&c.* which any perſon or perſons hath in truſt to any ſecret uſe of any ſuch offendor or offendors, *&c.* 13 *Eliz. chap.* 7. Lord and Tenant are; the Tenant makes a Feoffment to deceive the Lord of the Wardſhip, and then becomes a Bankrupt, theſe Lands ſhall be ſold by the Commiſſioners, for although the conveyance was only fraudulent as againſt the Lord, yet there was a truſt between the Feoffor and Feoffee, *Stones Lecture, fol.* 185.

4.

(49.) Mannors, Lands, Tenements, *&c.* conveyed or procured, or cauſed to be conveyed by the Bankrupt to any of his children, or other perſon or perſons, except the ſame ſhall be purchaſed or conveyed for, or upon marriage of any of his or her children, both the parties married being of the years of conſent, or ſome valuable conſideration. 1 *Jac.* 15.

(50.) A Tradeſman in conſideration of marriage, makes a conveyance of Lands, to the uſe of himſelf and his wife, and held to be within the Statute of 1 *Jac. vide Stiles Reports, fol.* 288. *Tucker verſ. Coſh.*

51. Alſo

(51.) Also the said Commissioners have power to sell Lands and Tenements conveyed, upon condition; by 21 *Jac. cap.* 19. where it is thus, *If any person that now is, or hereafter shall become a Bankrupt, have heretofore granted, conveyed, or assured, or shall at any time hereafter grant, convey, or assure any Lands, Tenements, Hereditaments, goods, Chattels, or other Estate, unto any person or persons, upon condition or power of redemption at a day to come, by payment of money or otherwise, that it shall and may be lawful to and for the said Commissioners, or the greater part of them, before the time of the performance of such condition, to assign and appoint under their hands and seals, such person or persons as they shall think fit to make tender or payment of money, or other performance, according to the nature of such condition, as fully as the Bankrupt might have done; And that the said Commissioners, or the greater part of them, shall after such tender, payment, or performance, have full power to sell, and dispose of such Lands, &c. so conveyed upon condition, for the benefit of the Creditors, as fully as they may sell or dispose of any the estate of the Bankrupt.* 21 Jac. chap. 19. 15. Lands conveyed upon condition.

(52.) *Quere*, Whether the Commissioners may not by the equity of this Stat. appoint one to enter, for a condition broken; As if a trader makes a Feoffment, upon condition to be performed on the part of the Feoffee; the Feoffee breaks the Condition, and before entry, the Feoffor becomes a Bankrupt: It should seem, the Commissioners may take advantage hereof; for the Statutes shall be liberally expounded for relief of the Creditors: if not, yet it seems to be comprehended within the words of 13 *El. cap.* 7. whereby power is given to the Commissioners, to take order and direction with the Bankrupts Lands, *&c.* for such use, interest, right or title, as such offendor or offendors shall have in the same, which word (Title) includes, as I conceive, an entry for a condition broken: yet *Stone* makes a *quere* of it in his Lecture, fo. 12.

Lands intailed.

(53.) Lands, Tenements, *&c.* intailed: The Commissioners, or the greater numbers of them, shall have power by deed inednted and inrolled within six moneths, *&c.* to grant, bargain, sell and convey any Manors, Lands, Tenements or Hereditaments, whereof the Bankrupt is, or shall be in any wise

seized

ſeized in Tail, in poſſeſſion, reverſion or remainder (and whereof no reverſion or remainder is or ſhall be in the Kings Majeſtie, his Heirs or Succeſſors, of the gift or proviſion of his Majeſty his Progenitors, Heirs or Succeſſors:) to any perſon or perſons, for the relief and benefit of the Creditors, of all ſuch Bankrupts: And that all and every ſuch grants, &c. ſhall be good and available in Law againſt the Bankrupt, his Iſſue, and all claiming by, from, or under him, ſince the time that he became Bankrupt; and alſo againſt all other perſons, whom the Bankrupt by common Recoverie, or other waies or means might cut off or debarr from any Remainder, Reverſion, Rent, Profit, Title, or poſſibility into, or out of any of the ſaid Manors, Lands, Tenements or Hereditaments, 21 *Jac. cap.* 19.

(54.) Alſo Lands, Tenements, *&c.* purchaſed by, or deſcended or come to the Bankrupt before his debts payed or agreed for, as appears by 13 *Eliz. cap.* 7. where it is thus; That if any perſon or perſons, which is, or ſhall be publiſhed and declared to be a Bankrupt, by vertue of this Act, ſhall at any time hereafter, purchaſe any Lands, Tenements, Here- Lands deſcended.

ditaments, Free or Copy; or Offices, Fees, Goods or Chattels; or that any Lands, Tenements, Hereditaments, Free or Copy, Offices, Fees, Goods or Chattels, ſhall deſcend, revert, or by any means come to any ſuch perſon or perſons being Bankrupts, as is aforeſaid: before ſuch time as their debts due to their Creditors ſhall fully be ſatisfied, and payed, or otherwiſe agreed for: That then the ſaid Lands, *&c.* ſhall be ſold by the ſaid Commiſſioners, or the more part of them, for and towards the payment of the Creditors, in ſuch manner, as other Lands, *&c.* of the Bankrupts, which they had when they were firſt declared to be Bankrupts, ſhould or might have been, *&c.* 13 *El. cap.* 7.

(55.) If after the commiſſion awarded, *&c.* and diſtribution made of all the Bankrupts Eſtate, towards the ſatisfaction of the Creditors; Every Creditor having an equal part: Lands, Goods, *&c.* deſcend or come to the Bankrupt; Mr. *Stone* makes a *quere* (fo. 17.) whether in in ſuch caſe, they ſhall be ſubject alſo to a new ſale or diſtribution: And it ſeems that they ſhall, for the Commiſſioners power is not fully executed untill the Creditors be ſatisfied.

56. The

(56.) The Commissioners have also power to sell Lands, Tenements, &c. of the Bankrupts extended, by such as pretend to be accomptants to the King; by 21 *Jac. cap.* 19. It is thus; *If it shall happen any Lands, Tenements, &c. Goods, Chattels, Debts, or other Estate of any Bankrupt to be extended, after such time as he or she is become a Bankrupt, by any person or persons, under colour or pretence of his or their being accomptant, or any waies indebted unto our Sovereign Lord the Kings Majestie, his Heirs or Successors: That then, it shall and may be lawful, to and for the said Commissioners, to examine upon Oath, whether the said debt were due to such debtor or accomptant, upon any bargain or contract originally made between such accomptant, and the said Bankrupt, &c. and his or their Servants: And if the said Bargain or Contract was originally made, to and with any other person or persons, than the said Debtor or Accomptant, or for the use or trust of any other person or persons: Then it shall and may be lawful, to and for the said Commissioners, or the greater part of them, to order and dispose of all such Lands, &c. to and for the use of the Creditors, which shall* Lands extended.

ſeek relief by the ſaid Commiſſion: And that the order and diſpoſition of the ſaid Commiſſioners, or the greater part of them, ſhall be good and available againſt the ſaid extent; And that ſuch perſon and perſons, to whom the ſaid Lands, &c. ſhall be bargained, ſold, &c. by the ſaid Commiſſioners as aforeſaid, or the greater part of them, ſhall have good remedy to have, demand, and recover the ſame, againſt ſuch perſon or perſons that ſhall detain the ſame, &c. 21 Jac. cap. 19.

Lands conveyed by the Bankrupt bona fide.

(57.) The Commiſſioners cannot ſell any Lands, Tenements, Hereditaments, conveyed by any ſuch Bankrupt (*bona fide*) before he became Bankrupt: At the later end of 13 *El. cap.* 7. there is ſuch a Proviſo, *viz.* Provided alwaies, that this Act ſhall not extend to any Lands, Tenements or Hereditaments, free or copy-hold, which heretofore hath been aſſured by any ſuch Bankrupt; or hereafter ſhall be aſſured by any Bankrupt, before he became Bankrupt; ſo that alwaies ſuch aſſurance be made, *bona fide*, and not to the uſe of the Bankrupt himſelf only, or his Heirs: And that the parties to whoſe uſe ſuch aſſurance hath or ſhall be made, be not at or before the making of ſuch aſſurance, privie, or

or consenting to the fraudulent purpose of any such Bankrupt, to deceive his Creditors, 13 *El. cap.* 7.

(58.) It was resolved, (*Cook lib.* 2. 26. *a.* case of Bankrupts) by the Court, That the Proviso concerning gifts and grants (*bona fide,*) doth not make any gift or grant good, which the Bankrupt made, after that he became Bankrupt, but to exclude him out of the penalty of the Act: I suppose this resolution should be applyed to that part of 13 *El. cap.* 7. which imposeth the penalty or forfeiture of double the value, for detaining or possessing fraudulently by covin or collusion any debts, *&c.* Lands, Tenements, *&c.* of the Bankrupts, other than such as are due, *&c.* and the same to proceed *bona fide*, without fraud or covin, *&c.* although in *Poulton*, the said Book and resolution be quoted in the Margine opposite to the Proviso; before set down in Sect. 57.

(59.) Also the Chattels and Goods of the Bankrupt are saleable, *&c.* by the Commissioners, 13 *El. cap.* 7. Personal Estate.

1. Chattels Real.

Chattels real, as Leases for years. A Lease for years is made, Provided that the Lessee shall not alien; the Lessee becomes a Bankrupt; It is a *Quere* in Mr. *Stones* Lecture, fo. 15. whether the sale of

of the Commiſſioners be a forfeiture? To which it may be anſwered in the negative, that it is not, becauſe this intereſt is tranſmitted by Act of Parliament, to which every man is intended party, and not by ſale of the Leſſee.

Offices. (60.) Offices are likewiſe mentioned in 13 *Eliz. cap.* 7. and made ſaleable by the Commiſſioners; which by *Stone* in his lecture fo. 13. is intended to be Offices of Inheritance, *&c.* as the Warden of the Fleet, and ſuch like, and not Offices of Truſt, *&c.* And by 3 *H.* 7. *cap.* 12. any Offices which concern the adminiſtration of Juſtice or Clerkſhip in any Court of Record, or which concern the Kings Treaſure, Revenue, Cuſtomes, *&c.* cannot be bargained or ſold for Money, but ſuch bargain and ſale is void; and both buyer and ſeller made incapable, *&c.* Therefore doubtleſs, ſuch offices cannot be aſſigned by the Commiſſioners, in ſatisfaction of a Debt of the Bankrupts, nor are comprehended within the ſaid Statute; there being other Offices that may be ſold; and ſo the words of the Statute ſatisfied; and Offices of Truſt are individually annexed to the perſon; *vid. Coke lib.* 9. 48. *a.* The Earl of *Shrewsburies* caſe.

61. Second-

(61.) Secondly, The Bankrupts perſonal Eſtate, Goods or Chattels of the Bankrupt, whereſoever to be found; by 13 *El. cap.* 7. are made ſaleable by the Commiſſioners: They may ſell a Bankrupts goods in *Ireland*, *Stone* in his Lecture fo. 90. *A.* hath an advowſon, the Church becomes void, and then *A.* becomes a Bankrupt: It is made a *Quere* by Mr. *Stone* in his Lecture, whether the Commiſſioners may ſell it; and I ſuppoſe it may be anſwered negatively, that they cannot ſell it; for it is a thing in Action, and ſo not ſaleable by the Common Law; and no particular power is given by any of the Acts for ſale of it, as there is for ſale of Debts due to the Bankrupt, as hereafter appeareth: And without doubt, if the Commiſſioners preſent any one for money, it is Symonie. 2. Chattels perſonal.

(62.) Leaſes, Goods, Chattels, or Debts of the Bankrupt, by him conveyed or procured to be conveyed or tranſferred to any of his Children, or other perſon or perſons, except the ſame ſhall be purchaſed, conveyed, or transferred, for or upon marriage of any of his or her children, both the parties married being of

of years of consent, or some valuable Consideration, 1 *Jac. cap.* 15.

(63.) Any Goods or Chattels that shall by any means come unto the Bankrupt, before such time as his Debts shall be satisfied or agreed for; as well as other Chattels which the Bankrupt had, when first declared to be a Bankrupt, 13 *Eliz. cap.* 7.

(64.) Goods and Chattels extended of the Bankrupts, by pretended accomptants or debtors to the King; *vide devant*, Sect. 56.

Goods extended.

(65.) Goods and Chattels of the Bankrupt extended, or taken in execution. Goods of the Bankrupts were extended by vertue of a Statute; and the extent was before he became Bankrupt; but the *Liberate* after; and held that they could not be sold by the Commissioners of Bankrupts; because being extended they are in *Custodia Legis*; so that the cognizors have no power to give, sell, or otherwise dispose of them: And although the Cognizee hath no absolute property in them by the extent, and before the *Liberate*, because at the return of the *Liberate*,

berate, he may refuſe them, if he will: yet that is for the advantage of the Cognizee, and the Cognizor hath no property in them, but only in caſe where the Cognizee refuſeth them; for the goods are bound by the *Teſte* of the Writ of extent or execution ſued: and when the *liberate* is ſued, it hath relation to the extent; and they are but as one extent: *Crook, part* 3. 149, 150. *Audley verſus Halſey.*

(66.) Goods and Chattels, whereof the Bankrupt hath the poſſeſſion and diſpoſal as his own: The words of the Statute are, *Whereas many perſons before they become Bankrupt do convey their goods unto other men, upon good conſideration, and yet keep the ſame, and are reputed owners thereof, and do diſpoſe of the ſame, as their own, Be it enacted, that if any perſon or perſons ſhall become a Bankrupt, and at ſuch time as they ſhall ſo become a Bankrupt, ſhall by the conſent and permiſſion of the true owners or Proprietors, have in their poſſeſſion, order, and diſpoſition, any of the goods or chattels, whereof they ſhall be reputed owners, and take upon them the ſale, alteration, and diſpoſition of them as owners, the* Com-

Goods poſſeſt by the Bankrupt.

Commiſſioners, or greater number may ſell, and diſpoſe of the ſame, for the benefit of the Creditors. 21 Jac. 19.

(67.) Goods or Chattels paſſed away upon condition, or power of redemption by the Bankrupt. 21 *Jac.* 19. *vide*, before *Sect.* 51.

Debts. (68.) Debts due to the Bankrupt are ſaleable, by 13 *El. cap.* 7. expreſly; and although they are transferred into other mens names, by 1 *Jac. chap.* 15.

(69.) In an action upon the Caſe brought for words ſpoken by the Defendant againſt the Plaintiff, the Plaintiff recovered of the Defendant for Dammages and Coſts, twelve pounds: And after the execution ſued, and money levied by the Sheriff (before the return of the Writ) the Plaintiff becomes a Bankrupt, and the ſaid twelve pounds is aſſigned by the Commiſſioners to the creditors, and the money being brought into Court, the Plaintiff [now a Bankrupt] moves for it; and the Creditors to whom the ſame was aſſigned, likewiſe moved for it; and by *Jones* and *Hide*, Juſtices, the aſſignment was good, becauſe it was the Bankrupts Debt, and forfeitable

feitable by out-lawry: but *Whitlock* and *Crook* Juſtices *contra*; becauſe the Sheriff levying of the money before the party became a Bankrupt, it was in *Cuſtodia legis*, and the Creditors cannnot give a diſcharge, nor are they parties in Court, and if the Judgment ſhould be reverſed, not compellable to make reſtitution: and afterwards it was judged accordingly; and that the money be delivered to the plaintiff, he acknowledging ſatisfaction: alſo it was ſaid, that the Money was not the Plaintiffs until payed out of Court. *Crook, parte* 3. 166, 167. *Benſon verſ. Flower & Backwel.*

(69.) *A.* hath one in Execution for Debt, and then he becomes a Bankrupt, the Commiſſioners aſſign the Debt, if the party eſcape, whether may this Aſſignee have an action of eſcape: this is a Quere in Mr. *Stones Lecture*, fol. 9. And I conceive may be anſwered in the affirmative; for by *Weſtminſter* 2. *chap.* 11. Debt is given in ſuch caſe againſt the Jaylor by the equity of that Statute, [for the words extend only to Accomptants.] And by 1 *Jac. chap.* 15. It is thus: *That the Commeſſioners of Bankrupt, or the greater part of them, ſhall have*

have power to grant and assign, or otherwise to order and dispose all or any of the Debt due, or to be due, to and for the benefit of the said Bankrupt, by what person or persons soever, or in what manner or form soever, to the use of the Creditors of the said Bankrupt, according to the true intent of the former Statute of Bankrupts: And that the same grant, assignment, or disposition of the said Debts, in form aforesaid, to be made by the said Commissioners, or any part of them, shall so vest the property, right, and interest of the said Debt and Debts, in the person or persons of him, her, or them, to whom it shall be granted, &c. by the said Commissioners, as fully to all intents and purposes, as if the said Bill, Bond, &c. Judgment, or Contract, whereon the said Debt, or Debts shall arise or grow, had been with the person or persons to whom the same shall be granted, &c. And that after such grant, assignment, or disposition: neither the Bankrupts, nor any other shall have power to receive, recover, or release it, &c. 1 Jac. 15. So, that by the assignment, the Debt is vested to all intents and purposes in the Grantee, as if he had been the original

Deb-

Debtor, might have had his action againſt the Sheriff, therefore the Grantee: and the Statute ſhall be liberally expounded for the relief of Creditors, eſpecially, ſeeing in this caſe the Aſſignee or Grantee, is without any remedy for the Debt, if he cannot relieve himſelf againſt the Sheriff.

(70.) And Mr. *Stone* in his *Lecture* makes another Quere, whether he that comes in as Creditor, and hath a debt made over unto him by the Commiſſioners, *&c.* may not be barred notwithſtanding by the Statute of limitations. And it may be anſwered that he ſhall be barred, for neither of the Statutes gives the Aſſignee any larger power, *&c.* than the original debtor had: alſo the Statute of limitation, was made for quieting of mens eſtates, and avoiding of Suites, which Statute, ſhall not be taken away without ſpecial words.

Things diſpoſed of by the Bankrupt.

(71.) Such things as the Bankrupt himſelf diſpoſed to the ſatisfaction of ſome of the Creditors, after that he became a Bankrupt, for the Statute of 13 *Eliz. chap.* 7. is, *That the Commiſſioners muſt diſtribute to the Creditors ſhare and ſhare alike*, &c. *and that every ſuch bargain, ſale*, &c. *ſhall be good*

and effectual againſt the offendors and all perſons, &c. And if the debtor after that he becomes a Bankrupt, may prefer one Creditor before another, it would be unreaſonable, and a great defect in Law, that after he hath utterly diſcredited himſelf by becoming a Bankrupt, the Law ſhould intruſt him with the diſtribution of his Goods. *Cook, lib.* 2. 25. *b.* 26. *a. Caſe of Bankrupts.*

Now obſerve the means of diſcovery, and obtaining of the Bankrupts Eſtate.

Break open Houſes.

(72.) It is enacted by 21 *Jac. chap.* 19. that the Commiſſioners, in execution of their Commiſſion, or the greater part of them, or any other perſon or perſons, officer, or officers by them or the greater part of them to be deputed, or appointed by their warrant or warrants under their hands and ſeals, may break open the houſe or houſes, chambers, ſhops, ware-houſes, doors, trunks, or cheſts of the Bankrupt, where the ſaid Bankrupt, or any of his goods, or eſtate ſhall be, or reputed to be, and ſeize upon and order the Body, goods, chattels, ready money, and other eſtate of ſuch Bankrupt, as by former Laws are limited and appointed, *&c.* 21 *Jac. cap.* 19.

73. Next

(73.) Next by examination and punishment of persons: 1. The Bankrupt himself, they may compel him to come before them: *vide* before *Sect.* 39.) They have power to examine him upon oath, upon such interrogatories touching his Lands, Tenements, goods, chattels, debts, bills, bonds, books of accompt, and such other things as may tend to disclose his or their estate, or the secret grants, conveyances, and eloyning of his, her, or their Lands, Tenements, goods, money and debts, as they shall think fit. 1 *Jac. chap.* 15. Examination of persons by the Commissioners.

(74.) Then observe the Bankruprs punishment in case of his refractorines or deceit: first, for his not appearance before the Commissioners, *vide* before *Sect.* 39.) Secondly, in case he refuse to be examined, or answer not fully to every interrogatory to him to be administred by the said Commissioners or the greater part of them, it shall be lawful for the said Commissioners, or the greater part of them, to commit the said offendor or offendors to some streight or close imprisonment, there to remain, until he, she or they shall better conform him, or herself: 1 *Jac. chap.* 15.

Bankrupts perjury.

(75.) Thirdly, for his perjury: *If upon his, her, or their examination, it shall appear that he or she, or they have committed any wilful or corrupt perjury, tending to the hurt or damage of the Creditors of the said Bankrupt, to the value of* 10 lib. *of lawful money of* England, *or above; the party so offending shall or may be thereof indicted, in any of the Kings Majesties Courts of Record, and being lawfully convicted thereof, shall stand upon the Pillory in some publique place, by the space of two hours, and have one of his Ears, nailed to the Pillory and cut off*: 1 Jac. cap. 15.

His fraud.

(76.) Fourthly, For the Bankrupts fraud: *And if any Bankrupt shall upon his or her examination to be taken before the said Commissioners* (executing the said Commission) *be found fraudulently or deceitfully to have conveyed away his or her goods, chattels, lands, tenements, offices, &c. or other estate, or any part thereof to the value of* 20 lib. *or above; to the end and purpose to hinder the execution of this Statute, or of any other the aforesaid Statutes, or thereby to defraud, or delay, or hinder his or her Creditors of the same; and shall not upon his or her examination, discover unto the said Commis-*

missioners, and (if it lie in his or her power) deliver unto the said Commissioners, all that estate, goods, & chattels, so fraudulently and deceitfully conveyed away as aforesaid, or by him, or her, his or her means kept or detained from the said Commissioners: or that cannot make it appear unto the said Commissioners, that he or she hath sustained some casual loss, whereby he or she is disabled to pay what he, or she then owed; the offender shall or may be indicted for such fraud, or abuse at the Assizes, or general Sessions, to be holden, before the Judges of Assize, or Justices of Peace, of the County or place, where he, or she shall become Bankrupt: and if upon such Indictment, or Indictments, the Bankrupts be thereof convicted, he, or she so convicted, shall be set in the Pillory in some publike place, for the space of two hours, and have one of his, or her ears nayled to the Pillory, and cut off. 21 Jac. cap. 19.

(77.) Secondly, by examination of the Bankrupts wife: After such time as any person shall by the said Commissioners, executing the said Commission, or the greater part of them, be lawfully adjudged, or declared to be a Bankrupt, the said Commissioners, executing such Com-

Wife of the Bankrupt.

Commiſſion, ſhall have power and authority upon oath to examine the wife and wives of all and every ſuch Bankrupts, for the finding out and diſcovery of the eſtate and eſtates, goods, and chattels of ſuch Bankrupt or Bankrupts, concealed, kept, or diſpoſed of by ſuch wife or wives, in their own perſons, or by their own act or means, or by any other perſon or perſons: And that ſhe, and they, the ſaid wife and wives ſhall incur ſuch danger and penalty, for not coming before the ſaid Commiſſioners, or for refuſing to be ſworn, or examined; or for not diſcloſing of the truth, upon her, or their examination or examinations, as in and by the former Laws, or either of them, is already made and provided againſt any other perſon or perſons in like caſes: 21 *Jac. chap.* 19.

Other perſons.

(78.) Thirdly, by examination of other perſons. Any perſon known or ſuſpected to have any of the Bankrupts eſtate, debts, *&c.* Wherein note, Firſt, the power of the Commiſſioners to bring them before them; the Commiſſioners upon complaint made to them by any party grieved, knowing, ſuppoſing, or ſuſpecting any of the goods, chattels, wares,

wares, Merchandizes, or debts of such offendor or offendors, to be in custody, use, occupying, keeping, or possession of any person or persons; or any person or persons to be indebted to any such offendor or offendors, and do make relation thereof to the said Commissioners so to be appointed, or the more part of them, That then the said Commissioners, or the more part of them shall have full power and authority to send for, and call before them, by such process, ways, and means, as they shall think convenient, all and every such person or persons, so known, or suspected to have any such goods, chattels, wares, &c. in his or their custody, use, occupation, keeping, or possession, or supposed, or suspected to be indebted to such offendor or offendors: And secondly, to examine them: upon their appearance, the Commissioners may examine them, and every of them, as well by their oaths, as otherwise by such means as the said Commissioners, or the more part of them shall think fit, for and upon the specialty, certainty, and true declaration and knowledge of all and singular such goods, chattels, wares, merchandizes and debts, of any such offendor or offendors, as be supposed, or

ſuſpected to be owing to any ſuch offendor or offendors, 13 *El. chap.* 7.

Refuſing to come before the Commiſſioners.

(79.) And in the next and third place, take notice of the puniſhment of ſuch other perſons; firſt, for their refuſing to come before the Commiſſioners, or to be ſworn and make anſwer. And by the Statute of 1 *Jac. chap.* 15. It is ſet forth, that no good means was appointed by 13 *Eliz.* either by impriſonment, or other penalty, to procure perſons to be ſuſpected to have any part of the money, goods, chattels, or debts of the ſaid offendors, or to be indebted to them, to come before the Commiſſioners, or to be examined by them, *&c.* and then enacts, That if any perſon, or perſons being known, ſuppoſed, or ſuſpected, to have or detain any part of the lands, tenements, or hereditaments, goods, chattels, or debts of the ſaid Bankrupt, or to be indebted to, or for the benefit of the ſaid Bankrupt, ſhall after lawful warning to the ſaid perſon or perſons given, to come before the ſaid Commiſſioners, or the greater part of them, to be examined, refuſe to come, or ſhall not come before the ſaid Commiſſioners at the time appointed, having no lawful

lawful impediment (ſuch as ſhall be allowed by the ſaid Commiſſioners, or the greater part of them;) or that any ſuch perſon or perſons, having knowledge or warning of any other aſſembly, or meeting of the ſaid Commiſſioners ſhall not come and appear before them, at ſuch time, as he or ſhe may lawfully come, having no ſuch lawful impediment, as ſhall be then made known to the ſaid Commiſſioners, and by them admitted, & allowed as aforeſaid. Or being come before them, ſhall refuſe to be ſworn, and to make anſwer to ſuch interrogatories as ſhall be miniſtred to him or them, according to the true intent and meaning of the ſaid Statute of 13 *Eliz.* or of this Act: That then it ſhall be lawful for the ſaid Commiſſioners, or the greater part of them, to commit to ſuch ward or priſons, as to them, or the greater part of them, ſhall be thought meet, all ſuch perſon and perſons, as ſo refuſe to be ſworn, and make anſwer to ſuch Interrogatories, as ſhall be ſo adminiſtred as aforeſaid: 1 *Jac.* 15.

Refuſing to be ſworn, and anſwer.

Their puniſhment.

(80.) And alſo to direct their warrants to ſuch perſon or perſons, as to them, or the greater part of them ſhall be

be thought meet, to apprehend and arreſt ſuch perſon and perſons as ſhall refuſe to appear before them as aforeſaid, and to bring him, her, or them, before the ſaid Commiſſioners, or the greater part of them, to be examined as aforeſaid; and upon their refuſal, to commit them to ſuch Priſons as the Commiſſioners ſhall think meet, there to remain without Bail or Mainpriſe, untill their ſubmiſſion to the Commiſſioners to be examined, *&c.* 2 *Jac. cap.* 15.

(81.) But by 13 *Eliz. cap.* 7. in caſe any ſuch perſon or perſons, upon examination, do not diſcover the truth touching the ſaid things whereof they are examined by the Commiſſioners as aforeſaid, or do deny to ſwear, he is to forfeit double the value of the thing concealed, (*vid. apres*, forfeiture,) which doubtleſs is not taken away by 1 *Jac. cap.* 15. but the impriſonment is thereby added as a further penalty; and to force the parties ſuſpected to have any of the Bankrupts Eſtate, to come before the Commiſſioners and make a diſcoverie: Alſo it may be obſerved, that the Statute of 13 *Eliz.* mentioneth only the concealing of the perſonal Eſtate, but 1 *Jac.*

cap.

cap. 15. Extends to Lands, Tenements, *&c.* as before, that are ſo with-held or conceal'd.

(82.) Thirdly, For their Perjurie: If any perſon or perſons, other than the Bankrupt, either by ſubornation, unlawful procurement, ſiniſter perſwaſion or means of any others, or by his own act, conſent or agreement; ſhall wilfully and corruptly commit any manner of wilful Perjurie, by his depoſition to be taken before the ſaid Commiſſioners, or the greater part of them, as aforeſaid; That then the party or parties ſo offending; and all and every perſon and perſons, that ſhall unlawfully and corruptly procure any ſuch unlawful, wilful, and corrupt Perjurie, ſhall or may therefore be indicted in any of the Kings Majeſties Courts of Record; and after his or their conviction thereof, ſhall incur ſuch forfeiture, and receive and ſuffer ſuch pains and puniſhment as are limited by the Statute made concerning Perjurie, (*viz.* 5 *El. cap.* 9.) Now the puniſhment appointed for Perjurie by that Statute is, That the perſon committing Perjurie ſhall forfeit 20 *l.* and indure half a years impriſonment without Bail or Mainpriſe, and

Their Perjurie.

1 Jac. cap. 15.

and his Oath never after to be received, *&c.* And if he hath no Goods or Lands of that value; then he is to be set in the Pillory, in some Market-Town, and to have both his ears nailed, and to be disabled to be a Witnesse in any Court of Record, *vid.* 5 *Eliz. cap.* 9. and by the same Stat. of 5 *Eliz.* the Procurers of Perjurie are to forfeit 40 *l.* and if they have no Estate of that value, then to suffer half a years imprisonment, without Bail or Mainprise, and to stand in the Pillory by the space of an hour, and in some Market-Town next adjoyning to the place where the offence was done, and never after to be admitted to be a Witnesse in any Court of Record.

Concealing the Bankrupts Estate.

(83.) Fourthly, Concealing of the Bankrupts Estate: Any person being known or suspected to have any Goods, Chattels, *&c,* of the Bankrupts, or to be indebted to him, if he doth not upon examination disclose, and plainly declare his knowledge concerning the Premises, or doth deny to swear; Then every such person (upon due proof thereof before the Commissioners, by Witnesse, Examination, or otherwise, as they shall think fit) shall lose and forfeit double the

the value of ſuch Goods, Chattels, Debts, *&c.* by them or any of them ſo concealed, 13 *Eliz. cap.* 7.

(84.) Fraud: If any perſon or perſons do fraudulently, by covin or colluſion claim, demand, recover, poſſeſſe or detain any Debts, Duties, Goods, Chattels, Lands or Tenements, by writing, truſt, or otherwiſe, which were or ſhall be due, belonging or appertaining to any ſuch offendor or offendors, other than ſuch as he or they can and do prove to be due by right and conſcience for money paid, wares delivered, or other juſt conſideration, or cauſe reaſonable to the juſt value thereof, before the ſaid Commiſſioners ſo to be appointed, or the more part of them, as is aforeſaid; and the ſame to proceed (*bona fide*) without fraud or covin; That then every ſuch perſon or perſons ſo craftily demanding, having or detaining any ſuch debt, duty, or other thing, as is aforeſaid, ſhall forfeit and loſe double as much as he or they ſhall ſo claim, demand, detain or poſſeſs, 13 *Eliz. cap.* 7. Fraud.

85. The ſaid Forfeitures of double the value in both the caſes before mentioned, are to be levied and imployed by Forfeitures how imployed.

by the Commiſſioners, as followeth, *viz.* The ſaid Commiſſioners, or the more part of them is to levie the ſame of the Lands, Tenements, Hereditaments, Goods and Chattels of the perſons offending, by ſuch waies and means, and in ſuch manner and form as is before limited and appointed for the principal offendor or offendors, debtor or debtors; and the ſame forfeiture or forfeitures to be diſtributed and imployed to and for the ſatisfaction and payment of the debts of the ſaid Creditor or Creditors, in ſuch manner, rate and form, as is by the Statute declared concerning the ordering of the Lands and Tenements, Offices, Fees, Goods and Chattels of ſuch offendor or offendors, debtor or debtors; 13 *El. cap.* 7.

Vid. Poſt.

Over-plus. (86.) Over-plus: And if it ſhall fortune the Creditors of any ſuch Bankrupt to be ſatisfied and payed off their debts and duties, of or with the proper Lands, Tenements, Goods, Chattels, & Debts of the ſaid Bankrupts, or of or with the ſame and ſome part of the forfeitures of the ſaid double values, to be forfeited as aforeſaid; and that there ſhall remain an over-plus of the ſaid for-

forfeitures of the double values; That then one moyetie thereof ſhall be by the ſaid Commiſſioners, within convenient time after the levying thereof, paid unto the Queens Majeſtie, her Heirs and Succeſſors; and the other Moyetie ſhall be by the ſaid Commiſſioners imployed and diſtributed to and amongſt the Poor, within the Hoſpitals, in every City, Town or Country, where any ſuch Bankrupt ſhall happen to be, 13 *Eliz. cap.* 7. But the forfeitures by 1 *Jac. cap.* 15. [being for Perjurie and ſuborning of Perjurie] is by the ſaid Act to be ſued for, and recovered by the Creditors only, or any of them that will ſue for the ſame, by action of Debt, Bill, Plaint, or Information in any of the Kings Courts of Record; and the ſum and ſums of money ſo recovered, (the charges of ſuit being deducted) ſhall be diſtributed, and divided towards the payment of the ſaid Creditors of the ſaid Bankrupt, 1 *Jac. cap.* 15.

(87.) The allowance to Witneſſes: Provided alwaies, That ſuch Witneſſes as ſhall be ſent for by the Commiſſioners, ſhall have ſuch Coſts and Charges as the Commiſſioners in their diſcretion ſhall

Allowance to Witneſſes.

ſhall think fit: The ſame charges to be rateably born by the Creditors of the ſaid Bankrupt, according to the proportion of each of their ſeveral Debts, 1 *Jac. cap.* 15.

The next thing to be conſidered, is the manner of the ordering and diſpoſal of the Bankrupts Eſtate by the Commiſſioners.

In General. (88.) Firſt, in General, The Commiſſioners may according to their diſcretion, order the eſtate of the Bankrupt for the Creditors ſatisfaction, 13 *Eliz. cap.* 7. Secondly, more Particularly; Firſt, by views and appraiſement; The Commiſſioners may cauſe the Bankrupts Lands, Tenements, Fees, Annuities, Offices, Goods, Chattels, Wares, Merchandiſes and Debts, to be ſearched, viewed, rented, and appraiſed, to the beſt value they may, 13 *Eliz. cap.* 7.

In Particular.

View, appraiſement.

Sale. (89.) Secondly, by Sale: 1. To whom may they ſell? The Statute of 13 *Eliz. cap.* 7. is, that the Commiſſioners may ſell, without mentioning to whom; and by 21 *Jac.* 19. which giveth power to the Commiſſioners to ſell entailed lands,

it

it is to any perſon or perſons; which ſurely is intended to perſons capable, and not to aliens, although they be Creditors.

(90.) Thirdly, Of what? Of all Lands, Tenements, Hereditaments, and Deeds, Evidences and Writings touching the ſame; and of all Fees, Offices, Goods and Chattels of the offendor, as is before ſet down. Of what.

(91.) Fourthly, In what Manner? as to the Lands, Tenements, Goods and Chattels in general of the Bankrupts; the ſale is to be by Deed Indented and Inrolled in any of his Majeſties Courts of Record, or otherwiſe to be ordered by the Commiſſioners, for ſatisfaction of the Creditors, 13 *Eliz. cap.* 7. And therefore, although the ſale be not by Deed inrolled, according to the words of the Act, yet it is good enough, *Cooke, lib.* 2. 25, 26. caſe of Bankrupts: A Rent Seck, whereof there is no ſeiſin, ſhall be ſold, and the ſale is good without Attornement; *Stones* Lecture, 174. *quere.* How.

(92.) As to lands intail'd of the Bankrupt Intail'd Lands.

krupt, the Commissioners, or the greater number of them, are impowred by 21 *Jac. cap.* 19. by Deed Indented and Inrolled within six moneths after the making thereof, in some of his Majesties Courts of Record at *Westminster*, to grant, bargain, sell and convey any Manors, Lands, Tenements or Hereditaments, whereof any Bankrupt is or shall be any waies seized of any Estate in Tail, in Possession, Reversion, or Remainder; and whereof no Reversion or Remainder is or shall be in the Kings Majestie, his Heirs or Successors of the gift or provision of his Majesty, his Progenitors, his Heirs or Successors, to any person or persons, for the relief and benefit of the Creditors, 21 *Jac. cap.* 19. *vide* before Sect. 53.

Copy-hold. (93.) As to Copy-hold, or customary Lands, they are to be sold by Deed Indented and Inrolled in any of his Majesties Courts of Record, *&c.* as other the Lands and Estate of the Bankrupt are appointed to be by 13 *Eliz. cap.* 7. But by the same Statute it is provided, That all and every person or persons, to whom any such sale of Copy-hold, or customary Lands or Tenements shall be made;

shall

ſhall, before ſuch time, as they or any of them, ſhall enter or take any profits of the ſame Lands or Tenements; agree, & compound with the Lords of the Manors of whom the ſame ſhall be holden, for ſuch Fines or Incomes as heretofore hath been moſt uſual and accuſtomed to be yielded or paid therefore: And upon every ſuch agreement or compoſition, the ſaid Lords for the time being, at the next Court to be holden at or for the ſaid Manors; ſhall not only grant unto the ſaid Vendee or Vendees upon requeſt, the ſame Copy or Cuſtomary Lands or Tenements, by Copy of Court-Roll of the ſaid Manors, for ſuch Eſtate or Intereſt as to them ſhall be ſold, and reſerving the antient Rents, Cuſtoms and Services; but alſo, in the ſame Court, admit them Tenants of the ſame Copy or Cuſtomary Lands, as other Copyholders of the ſame Manors have been wont to be admitted, and to receive their fealty accordingly, 13 *Eliz. cap.* 7.

(94.) A Copy-holder ſurrenders, & before admittance, *ceſtuy que uſe*, becomes a Bankrupt; The Commiſſioners ſell the Copy-hold, whether ſhall the Lord have 2 Fines, *viz.* one upon the

admittance of which ſhould have been made to *ceſtuy que uſe*, if he had not become a Bankrupt; and another upon the admittance of the perſon that comes in by ſale of the Commiſſioners of Bankrupts: and this is a *quere* in Mr. *Stones* Lecture, fol. 137. and it is there compared to a ſurrender made by the Heir before admittance, which is held to be good, but not to prejudice the Lord of his Fine due upon the Deſcent, *Cooke, lib.* 4. 226.

(95.) If the Vendee of a Copy-hold tender to the Lord a competent Fine, and the Lord refuſe it; The Vendee may enter, *Stones* Lecture, 176. The Commiſſioners may ſell Copy-hold intail'd, which by cuſtome may be intail'd and cut off: otherwiſe, if there be no ſuch cuſtome, *Stones* Lecture, 176. I conceive, if there be no ſuch cuſtome, then it is in nature of a Fee-ſimple conditional at the Common Law, and then if the condition be performed, *viz.* if the Copy-holder hath iſſue, *&c.* the Commiſſioners may ſell it, as I ſuppoſe.

(96.) As to a Condition, Lands, Goods, *&c.* of the Bankrupt, made over by

by him upon condition or power of Redemption, the Commiſſioners before the time of the performance of the condition, may appoint under their hands and ſeals, ſuch as they ſhall think fit to perform the condition; and after ſuch performance, ſhall diſpoſe of ſuch lands or goods for the Creditors advantage, as fully as of any other of the Bankrupts Eſtate, 21 *Jac. cap.* 19. *vid. devant*, Sect. (51.)

(97.) As to lands, *&c.* extended by a pretended Debtor or accomptant to the King, after that the party ſhall become a Bankrupt, 21 *Jac. cap.* 19. *vid.* Sect. 56. where it is ſet forth at large.

(98.) As to debts owing to the Bankrupt, *vid.* before Sect. 68. Suppoſe a Bankrupt be indebted to one 20 *l.* and to another 10 *l.* and hath a debt of 20 *l.* due to him by Bond; whether may the Commiſſioners aſſign the Bond to the two Creditors joyntly; and it was held by the Court, that it was to be divided and aſſigned according to the words of the Act, *viz.* to every Creditor a portion, part and part-like: Then another queſtion was offered, whether the Aſ-

ſignees might joyn in ſuit; and by *Warberton*, one of the Juſtices, part being aſſigned to one, and part to another, the Act of Parliament doth ſo operate upon it, that they ſhall ſue ſeverally: for he ſaid, by the cuſtome of *London*, part of a debt might be attached, *Godbolts* Reports, 195. *p.* 282.

Diſtribution of the Bankrupts Eſtate.

(99.) Thirdly; Note, the diſtribution made by the Commiſſioners, of the Bankrupts Eſtate, wherein obſerve; firſt, to what Creditors in general: It is enacted by 21 *Jac. cap.* 19. That the ſaid Act, and all other Acts of Parliament formerly made againſt Bankrupts, ſhould extend to ſtrangers born, as well Aliens as Denizens, as effectually as to the natural born Subjects, both to make them ſubject to the Law, as Bankrupts, as alſo to make them capable of the benefit or contribution, as Creditors by thoſe Laws: So, that ſatisfaction is to be made to all, as well Aliens as Denizens, *&c.*

(100.) Alſo, It is enacted by 21 *Jac. cap.* 19. That for the better diſtribution of the Lands, *&c.* Goods, Chattels, *&c.* of the Bankrupt, to and amongſt his Creditors; That the Commiſſioners or the greateſt part of them, ſhall and may

may examine upon Oath, or by any other waies or means, as to them ſhall ſeem meet, any perſon or perſons for the finding out, and diſcovery of the truth and certainty of the ſeveral debts due and owing to all ſuch Creditor or Creditors, as ſhall ſeek relief by ſuch courſe of Commiſſion to be ſued forth, *&c.* 21 *Jac.* 19.

(101.) *A.* and *B.* are ſureties for *I.S.* for the payment of money, and had Counter-Bonds from *I. S.* to ſave them harmleſs, the money was not payed at the day, the ſureties pay it; *I. S.* after becomes a Bankrupt; Reſolved, that *A.* and *B.* were Creditors, within the Statutes of Bankrupts: *Croke, part* 2. 127. *Oſborne* and *Churchman's* caſe; Mr. *Stone* in his Lecture, fol. 18. makes a *Querie*; whether, one becoming a Creditor to the Bankrupt after that he had notice that he was a Bankrupt, might be a Creditor, relievable within the Statutes: To which it may be anſwered in the negative; for if the Law diſables him to diſpoſe of his Eſtate, (after he becomes a Bankrupt) directly, Then he cannot diſpoſe of it by a mean, *viz.* by becoming a Debtor, and ſo to make

his Lands and Goods liable to his Debt, if in the caſe before, ſuch a Creditor were relieveable: and *Stone* ſeems to be of the ſame opinion, when he ſaith; A Bankrupt is committed to Priſon, becauſe he will not anſwer Interrogatories, the Gaoler gives him credit for victuals, he ſhall not be relieved, although he come in before diſtribution, fol. 183.

(102.) A Merchant is impriſoned, and after becomes a Debtor to *A.* and then the ſix moneths paſſe, *A.* is a Creditor relievable; for he is not a Bankrupt by relation, *Stones* Lecture, 182. The Statute of 21 *Jac. cap.* 19. makes one a Bankrupt by relation from the time of his Arreſt, only in two caſes, *viz.* either when he makes an Eſcape, or comes out upon common Bail, which enumeration I ſuppoſe, excludes (relation) in other caſes, in a penal Act of Parliament.

(103.) A Bankrupt is convicted for inmates, and the Statute gives an action of Debt in ſuch caſe to the Lord of the Leet, *&c.* he is no Creditor, within the Statute of Bankrupts; *Stones* Lecture, fol. 21. for I conceive this is not properly

perly a Debt, but only a means given to recover a Forfeiture; and by *Stone*, a Mortgagee of Lands may chuſe whether he will come in as a Creditor, fol. 181. There is before a ſpecial proviſion for ſatisfying of a condition by payment of the money, *&c.* by which it is intended, that the Mortgagee was never to be accompted as a Creditor.

(104.) It was decreed in *Star-Chamber*, that a Merchant for a wrong done by him to *I.S.* ſhould pay him 20*l.* and the Merchant becomes a Bankrupt, *I.S.* is no Creditor, *Stones* Lecture, 184. for this is no Debt due for moneys borrowed, or upon any original contract; but only a payment laid on by the Court, and an action of Debt (as it is conceived) lies not for it; but only the party is to be puniſhed by the Court, if he perform not the decree.

(105.) Secondly, more particularly; any Creditor coming in within four moneths after the Commiſſion ſued forth, by 1 *Jac. cap.* 15. The words are; And that it ſhall and may be lawful for any of the Creditors of the ſaid Bankrupt, within four moneths after any ſuch Commiſſion

miſſion ſhall be ſued forth, and until diſtribution ſhall be made by the ſaid Commiſſioners for the payment of the Bankrupts debts, as in ſuch caſe hath been uſed to partake and joyn with the other Creditors that ſhall ſue forth any ſuch Commiſſion for ſatisfaction or payment of his, her, or their debts to him or them owing, without any let, hinderance or diſturbance of any of the ſame Commiſſioners, or of any of the other Creditors of the ſaid Bankrupts: the ſame Creditors ſo coming in, to contribute to the charges of the ſaid Commiſſion: and that if the Creditors come not in within four moneths, then the Commiſſioners to have power to diſtribute: 1 *Jac. chap.* 15.

(106.) In a Caſe of one *Ruggles* of *Suffolk*, upon view of the Statutes of 13 *El. c.* 7. & 1 *Jac. c.* 15. of Bankrupts, it was reſolved by the Court, that if certain Creditors ſue a Commiſſion, and others within four moneths after, or more, being Creditors, come before diſtribution, and will joyn in the charge of the Commiſſion, and all that belongs to it, and tender their parts thereof: that they ſhall not be refuſed, but ſhall have their equal parts, as Creditors; but if any

any distribution be made of any part of the estate, no Creditors are to be admitted after, that come not in before: *Hobart*, 287. *Ruggles Case*.

(107.) A Commission was sued out by some of the Creditors of the Bankrupt, and they pursued it; and the lands were sold, and after other Creditors prayed to be joyned with them: Resolved in this case, First, That the Commissioners may sell and prepare for distribution, presently upon the execution of the Commission, but until the four moneths past, they may not proceed to distribution. Secondly, That in this case the offer of the Creditors, to be joyned was not an effectual offer, without offering to be contributory to the charge, but to offer any particular sum is not necessary; and these words (*for the charge of the Commission*) are to be extended to all charges, arising in suing forth of the Commission, and in execution, and defence thereof. Thirdly, Resolved, That at any time before distribution, the Creditors may come and pray to be joyned, but after the four moneths past, and distribution made, they come too late, for so the distribution may be made void.

Hut-

Hutton, 37, 38. *Ruggles case*, *Hughes Abridgement*, 316. *Case* 2.

Time of distribution.

(108.) Next, observe the time of satisfaction, or distribution, it seems it must not be, until four moneths after the Commission sued forth; for so much time is given to other Creditors to come in and joyn in the Commission; and if the Creditors come not in within that time, the Commissioners may distribute, 1 *Jac. chap.* 15.

Manner of distribution.

(109.) The manner of the distribution: No respect is to be had to the nature of the security, for by 13 *El.* 7. the Commissioners are to sell, or otherwise to order the Bankrupts estate, for true satisfaction and payment of the Creditors, rate and rate like, according to the Quantity of his or their debts, 23 *El. chap.* 7. A debt due to the Bankrupt by Bond, cannot be assigned to two of his Creditors joyntly, but part to one and part to another, and by vertue of the Statutes, they may sue severally, *&c. Godbolts Reports*, 195.

(110.) The Commissioners ought to make a several distribution to the Creditors, and not a joynt-sale, for the Act saith

ſaith † it muſt be to every one, rate, and rate-like, but where a debt is joyntly due, there the Commiſſioners may ſatisfie the ſame, by a joynt ſale to them, *Cook, lib.* 2. 26. *b. Caſe of Bankrupts.*

† 13 El 7.

(111.) All and every Creditor, and and Creditors, having ſecurity for his or their ſeveral debts by Judgment, Statute, Recognizance, ſpecialty with penalty, or without penalty, or other ſecurity, or having no ſecurity, or having made attachment in *London*, or any other place, by vertue of any cuſtom there uſed of the goods and chattels of any ſuch Bankrupt, whereof there is no execution or extent ſerved and executed, upon any the Lands, Tenements, Hereditaments, Goods, chattels, and other eſtate of ſuch Bankrupt, before ſuch time, as he, or ſhe, ſhall, or do become Bankrupt, ſhall not be relieved upon any ſuch Judgment, Statute, Recognizance, Specialty, Attachments, or other ſecurity for any more than a rateable part, of their juſt and due debts, with the other Creditors of the ſaid Bankrupts, without reſpect to any ſuch penalty or greater ſum contained in any Judgment, Statute,

Statute, Recognizance, Specialty, *&c.* or other ſecurity, 21 *Jac. chap.* 19. I ſuppoſe ſecurity by Mortgage of Lands, cannot be within this Statute, for there is particular proviſion for the ſame, in the ſame Statute, 21 *Jac.* 19. nor are lands extended as it ſeems within the ſaid clauſe, by reaſon of the words before, [*whereof there is no execution or extent ſerved or executed.*]

The next thing conſiderable is, the effect of the diſtribution, made by the Commiſſioners, as aforeſaid.

(112.) Firſt in general, as to Lands, Tenements, Hereditaments, goods, chattels, and other eſtate of the Bankrupt: by 13 *Eliz. chap.* 7. It is enacted, That every direction, order, bargain, ſale, and things done by the ſaid perſons ſo authorized [*viz. the Commiſſioners or greater number of them*] ſhall be good and effectual in the Law, to all intents, conſtructions and purpoſes, againſt the ſaid offendor or offendors, debtor or debtors, his or their wife or wives, heir and heirs, child and children, and ſuch perſon and perſons, as by joynt purchaſe with the ſaid offendor or offendors, ſhall have any eſtate,

eſtate, or intereſt in the premiſes; and againſt all other perſon and perſons, claiming by, from, or under ſuch offendor or offendors, debtor or debtors, by any Act or Acts, had, made, or done, after any ſuch perſon ſhall become Bankrupt, as aforeſaid; and alſo againſt the Lords of the Mannors, *&c.* [*vide* after for Copy-holds,] 13 *Eliz. chap.* 7. But not to bar any purchaſer upon valuable conſideration, unleſs the Commiſſion be ſued forth within five years after the party becomes a Bankrupt; by 21 *Jac. chap.* 19.

(113.) Secondly, As to Lands intailed of the Bankrupts: the Statute gives power to the Commiſſioners to grant, bargain, and ſell by deed inrolled, Lands, *&c.* intailed of the Bankrupts, [*vide devant*, *Sect.* 53.] and then adds, that all and every ſuch grants, bargains, ſales, and conveyances ſhall be good and available in the Law, to ſuch perſon or perſons, and their heirs, againſt the ſaid Bankrupts, and againſt all and every the iſſue of the bodies, of ſuch Bankrupts, and againſt all, and every perſon and perſons, claiming any eſtate, right, title, or intereſt, by, from,

Lands intayled.

from, or under the ſaid Bankrupts, after ſuch time, as ſuch perſon ſhall become Bankrupt, and againſt all and every ſuch perſon and perſons whatſoever, whom the ſaid Bankrupt, by common Recovery, or other way or means might cut off, or debar from any remainder, reverſion, rent, profit, title, or poſſibility, into or out of any of the ſaid Mannors, Lands, Tenements, or hereditaments: 21 *Jac. chap.* 19.

Copy-hold. (114.) Thirdly, as to Copy-holds, the ſale and diſpoſition of them, ſhall be good againſt the Bankrupts, to all intents and purpoſes, and againſt his or their wife or wives, heir and heirs, in like manner, as before for his other eſtate, *Sect.* 45. for there is no diſtinct clauſe for the Copy-holds; *viz.* *And alſo againſt the Lords of the Mannors, whereof the ſaid Cuſtomary, or Copy-hold Lands been holden, their Heirs, Succeſſors, and Aſſigns, and every of them*: and there is a *Previſo* added, That the Vendees of ſuch Copy-holds ſhall compound for their Fines with the Lords before entry: *vide Sect.* 93. before.

(115.) The ſale of the Commiſſioners

ners doth veſt the Copy-hold eſtate, ſo in the Vendee before admittance, that the ſaid Bankrupt cannot be ſaid to be Tenant; and therefore if he die before admittance, his wife ſhall not have any Cuſtomary eſtate, which by the cuſtom ſhe ought to have, when her husband dies Tenant; the Vendee is only excluded by the Statute from entry, or taking of the profits, before compoſition made with the Lord, which is only for the Lords benefit, and not the Copyholders; alſo it was held, that after compoſition for the time, and the admittance of the Vendee, it ſhall relate to deveſt all Cuſtomary eſtates happening ſince the ſale, and before the ſaid compoſition and admittance. *Crook, part* 3. 568, 569. *Parker verſ. Edith Bleek.*

(116.) If two Joynt-tenants be of Copy-hold Lands in Fee, and the one out of Court according to the cuſtom, ſurrender his part to the Lords hands, according to the cuſtom, to the uſe of his laſt will, and by his will deviſeth a part to a ſtranger in fee, and dieth; and at the next Court the ſurrender is preſented; by the ſurrender and preſentment the Joynture was ſevered, and the Deviſee

ought to be admitted to the moyety of the Lands, for now by relation, the ſtate of the Land was bound by the ſurrender. *Cook, ſur Litt.* 596.

Debts due to the Bankrupt.

(117.) As to the debts due to the Bankrupt, The Commiſſioners have power to grant, aſſign, or otherwiſe to order and diſpoſe all or any debts due, or to be due, to, or for the benefit of the Bankrupt, by any perſon or perſons whatſoever, or in what form ſoever, to the uſe of the Bankrupts Creditors, according to 13 *Eliz. chap.* 7. And that the ſame grant, aſſignment, or diſpoſition of the ſaid debts, ſhall ſo veſt the property, right, and intereſt of the ſaid debt and debts in the perſon or perſons to whom the ſame ſhall be ſo granted, aſſigned, *&c.* as fully to all intents and purpoſes, as if the Bonds, Bills, Statutes, Judgments, or contracts, whereupon ſuch debt or debts did ariſe, or grow, had been made to or with the perſon or perſons to whom the ſame ſhall be ſo aſſigned: And that after ſuch grant, aſſignment, or diſpoſition made of the ſaid debts, neither the Bankrupt, nor any other to whom any ſuch debt ſhall be due, ſhall have power to recover the ſame,

ſame, nor to make any releaſe or diſcharge thereof, neither ſhall the ſame be attached, as the debt of the Bankrupt, or ſuch ſaid other perſon or perſons to whom the ſame ſhall be due, by any other perſon or perſons, according to the cuſtom of the City of *London*, or otherwiſe; But that the party or parties to whom the ſaid debt ſhall be aſſigned, ſhall have like remedy to recover the ſame, as fully and lawfully in the name, or names of the perſon or perſons to whom the ſame ſhall be ſo granted, aſſigned, or ordered by the ſaid Commiſſioners, in all reſpects and purpoſes, as the party himſelf might have had: 1 *Jac. chap.* 15. *Provided always, that no debtor of the Bankrupt be hereby indangered for the payment of his or their Debt, truly and* bona fide, *to any ſuch Bankrupt, before ſuch time as he ſhall underſtand, or know that he is become a Bankrupt,* 1 Jac. chap. 15.

(118.) To give means of Recovery; As to the debts of the Bankrupt, aſſigned by the Commiſſioners; the aſſignee, ſhall have the like remedy to recover the ſame, as fully and lawfully, as the party himſelf. 1 *Jac. chap.* 15.

(119.) The Aſſignees of the ſaid debts may ſue for them in their own

names, because they are debts, transferred by Parliament; but yet notwithstanding, in case the action of debt arise upon a Contract, the defendant may wage his Law; for although the Parliament transferred the debt, yet it is no debt upon Record. *Croke, part* 2. 105. *Bradshaws Case.* A debt due by bond, assigned to two Creditors severally, they may sue severally for it: *Godbolts Reports, fol.* 195.

Lands extended.

(129.) As to Lands, *&c.* of the Bankrupt extended by any pretended debtor or accomptant to the King, after such time as the Bankrupt becomes a Bankrupt; such person or persons to whom the Commissioners, or major part, shall bargain, sell, grant or assign the said Lands, *&c.* shall have good remedy, to demand and recover the same, against such persons as detain the same. 21 *Jac. chap.* 19.

(121.) As to Lands, Tenements, *&c.* of the Bankrupts conveyed away upon condition the Commissioners have power to appoint one or more to perform the condition, *vide divant, Sect.* 51.

Creditor barred.

(122.) Another effect of the Commissioners

missioners distribution, is to bar the Creditor: if any Creditor of the Bankrupts, shall not be fully satisfied, or otherwise contented, by such means as the Statute appointeth, they may have their remedy against the Bankrupt, (as before they had) for the remainder, and shall be only barred for so much as they are satisfied, or contented for, and no more: 13 *El. cap.* 7.

(123.) Lastly, To restore the capacity of the Bankrupt: The Bankrupt to have the overplus of his estate if any be, after that the Creditors, are satisfied. And that the said Bankrupts after the full satisfaction of the said Creditors shall have power and authority to recover and receive the residue and remainder of the Debts to them owing. 1 *Jac. chap.* 15. Capacity of Bankrupt.

(124.) Next observe, the accompt of the Commissioners to the Bankrupt: such of the said Commissioners as shall put the said Commission in execution shall upon lawful request to them made by the Bankrupt, not only make a true declaration to the said Bankrupts of imploying and bestowing of their said Lands, Tenements, offices, Fees, goods, chattels, and debts so payed and satisfied to their Recompt.

ſaid Creditors, but alſo make payment of the overplus of the ſame (if any ſuch be) to the ſaid Bankrupts, their executors, adminiſtrators, or aſſigns. 13 *Eliz. chap.* 7.

(125.) Remedy for the Commiſſioners in any action brought againſt them for acting by force of the ſaid Statutes, they may plead not guilty, and juſtifie by the authority of the ſaid Acts, and the Plaintiff to reply *de ſon tort de meſme*: and if the Verdict paſs for the defendant, he ſhall have Coſts: 1 *Jac. cap.* 15.

The Table.

*A*Bſenting himſelf *makes a Bankrupt*, Sect. 2, 12, 13, 14.

Accompt made by the Commiſſioners to the Bankrupt, Sect. 124.

Allowance made to Witneſſes appearing before the Commiſſioners, Sect. 87.

Appearance of the Bankrupt before the Commiſſioners, and their power to inforce it, Sect. 30, 39. *of other perſons ſuſpected to have any of the Bankrupts goods*, Sect. 78.

Appraiſement of the Bankrupts Eſtate, Sect. 88.

Arreſt, a Trader ſuffering himſelf willingly to be arreſted, makes him a Bankrupt, Sect. 21.

Attachment of a Traders goods makes him a Bankrupt, Sect. 16, 17.

Authority of Commiſſioners immediately appointed by Act of Parliament, Sect. 29, 30, *&c. of Commiſſioners mediately appointed by Lord Chancellor*, Sect. 39, 40.

B

Bail; *coming out of prison upon common Bail, make a Bankrupt*, Sect. 22.

Bankrupt, his name, Sect. 1. *his Description in general*, Sect. 2. *more particularly from* Sect. 4. *to* 26. *his incapacity*, Sect. 28. *Proceeding against him by persons immediately authorized by Parliament*, Sect. 29, 31, 32. *By persons mediately authorized as Commissioners*, Sect. 36. *their authority, as to the Bankrupts person*, Sect. 39. *his Estate*, 43, usque ad 49. *his capacity restored*, Sect. 123.

Barr, The effect of the Commissioners disposing of the Bankrupts Estate to bar others, Sect. 112, 113.

C

Capacity of the Bankrupt taken away, Sect. 28. *restored*, Sect. 123.

Chattels of the Bankrupt to be disposed by the Commissioners, Sect. 59, 61, 62, 63, &c.

Clothier may be within the Stat. of Bankrupts, Sect. 11.

Commiſsion of Bankrupts granted by the Lord Keeper, Sect. 36. *within what time, and duration of it*, Sect. 36.

Commiſsioners of Bankrupts, how made, Sect. 36. *their Authority*. 39. *&c. their accompt to the Bankrupt*, Sect. 124.

Compoſition, endeavouring to inforce a Compoſition by a Trader makes him a Bankrupt, Sect. 24.

Condition, Commiſsioners may fulfil it, Sect. 51.

Copy-holds, valuable by the Commiſsioners, Sect. 45. *Diſtribution of them*, 114, 115. 116.

Creditors, order taken by the Commiſsioners as to their ſatisfaction, Sect. 88, 89, &c. *the effect of the diſtribution*, Sect. 112, 113.

D

Debts due to the Bankrupt ſaleable, Sect. 68, 69. *the remedy the perſons to whom they are ſaleable have to recover them*, Sect. 117, 118, 119.

Diſcovery of the Bankrupts Eſtate, Sect. 32. *breaking open Doors*, &c. 72. *examination of Perſons*, Sect. 73. *Puniſhment*, Sect. 74. *Examination of Bank-*

Bankrupts wife, Sect. 77. *other persons*, Sect. 78. *Punishment of them*, *Sect.* 79, 80, 82, 83, 84, 85.

Disposition of the Bankrupts Estate by the Commissioners, Sect. 88, 89. *of what*, 90. *in what manner*, 91. *as to Lands in tayl*, 92. *Copy-hold*, Sect. 93, 94. *Lands made over upon Condition*, Sect. 96. *Debts*, 98. *to what Creditors*, 99. &c. *not within four moneths*, Sect. 107. *manner of Distribution*, Sect. 109. *effect thereof*, Sect. 112.

E

Escape out of Prison makes a Bankrupt, Sect. 22.

Effect of the Commissioners distribution, as to Lands, Sect. 112, 113. *Copy-hold*, 114, 115, 116. *as to Bankrupts Debts*, 117, 118, 119. *to bar the Creditor*, Sect. 122. *to restore the Bankrupts capacity*. Sect. 123.

Estate of the Bankrupt subject to sale: as such as was by him joyntly purchased, Sect. 46. *not what was conveyed by him away before he became Bankrupt*, Sect. 57. *Also the Bankrupts Chatels are saleable by the Commissioners*, Sect. 59, 61, 62, 63. *Goods extend-*

extended, 65. *Goods of which the Bankrupt diſpoſed as his own*, Sect. 66.

Examination of the Bankrupt himſelf touching his Eſtate, Sect. 73. *Of his Wife*, Sect. 77. *Of perſons ſuſpected to have the Bankrupts Eſtate*, Sect. 78.

Expoſition of Statutes made againſt Bankrupts; *They are to be largely and beneficially expounded, for the relief of Creditors*, Sect. 27.

F

FEme Covert, ſole Merchant, within the Statute of Bankrupts, Sect. 8. *power of the Commiſſioners to examine the Bankrupts Feme*, 77.

Forfeiture, for refuſing to be examined by the Commiſſioners, or delivering the truth to them, Sect. 32. 81.

Fraud, fraudulent Gifts makes the Giver a Bankrupt, Sect. 25. *the Bankrupts fraud puniſhed*, Sect. 76. *fraudulent Recoveries againſt him*, Sect. 34.

G

GRaſier, within the Statute of Bankrupts, Sect. 10.

H

Hiding himself, makes a Bankrupt, Sect. 12. 14.

I

Imprisonment; Power of Commissioners to imprison the Bankrupt, Sect. 39. *other persons,* Sect. 73.

Joynt-tenants, whether sale made by Commissioners, prevents survivor-ship, Sect. 44. *Lands saleable, which were joyntly purchased by the Bankrupt,* Sect. 46.

Inne-keeper, not within the Statute of Bankrupts, Sect. 5.

Intail'd Lands of the Bankrupt, subject to the Statutes, Sect. 53.

K

Keeping in his house, makes a Bankrupt, Sect. 12. 14.

L

Limitation of Actions, whether that Statute extends to Bankrupts debts, Sect. 70.

M. *Mer-*

M

MErchant, what Merchant is within the Statute of Bankrupts, Sect. 4, 5, 6, 7, &c.
Mortgagee, may chuſe whether he will come in as a Creditor, Sect. 103.

O

OFfices ſaleable by Commiſſioners, Sect. 60.

P

PErjurie, of the Bankrupt himſelf, how puniſhable, Sect. 75. *of other perſons*, Sect. 82. *procurement of Perjurie*, 82.
Petition, to inforce Creditors to compound, makes the Petitioner a Bankrupt, Sect. 24.
Priſon, yielding himſelf to Priſon, and lying there 6 moneths, makes a Bankrupt, Sect. 19, 20, 21. vide *Areſt*.
Proclamation made for the Bankrupt, Sect. 39.
Property, how the ſale and diſtribution made

made by the Commissioners vesteth the property, Sect. 112, 113, 114, *&c.*
Protection obtained, makes a Bankrupt, Sect. 23.
Punishment of a Bankrupt, he shall be out of the Kings protection, Sect. 31. 39.
Pillorie, 75, 76. *of the Bankrupts Wife*, Sect. 77. *other persons*, Sect. 79, *&c.*

Q

Qualitie of any person, exempts not him out of the Commission of Bankrupts, if he be a Trader, Sect. 7.

R

Recovery, means of Recovery of the Debts of the Bankrupt assigned over, Sect. 118.
Relation, in what case the party shall be judged a Bankrupt from the time of his Arrest, Sect. 32.

S

Sale, the Commissioners authority to sell the Bankrupts Estate, Sect. 35. *of what Estate*, Sect. 43, 44, 45, *&c. to whom* 89. *in what manner*, Sect. 91. *&c. the*

&c. the effect of their ſale, Sect. 112.
Sanctuary, keeping of Sanctuary, makes a Bankrupt, Sect. 15.
Satisfaction, vide *diſpoſition*.
Shoomaker, may be within the Statute of Bankrupts, Sect. 5.
Scrivener may be a Bankrupt, Sect. 11.

T

TAile, Lands intailed ſaleable, Sect. 53. 92.
Taylor, not within the Statutes of Bankrupt, Sect. 6.
Truſt, Lands made over in Truſt for the Bankrupt, ſaleable by the Commiſſioners, Sect. 48.

U

UTlagary, a Traders ſuffering himſelf to be outlawed, makes him a Bankrupt, Sect. 18.

W

WArning, left for a Bankrupt to appear before the Commiſſioners, being not obſerved, he may be proclaimed a Bankrupt, Sect. 40.
Witneſſes, their allowance, Sect. 87.

The End. THE

THE

RESOLUTIONS

OF THE

Judges,

Upon 13 *Eliz.* and 27 *Eliz.* the Statutes touching Fraudulent Conveyances.

By Way Of

APPENDIX;

By The Same Author.

THE

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Upon 13 *Elix*, and 27 *Elix*, the Statutes touching Fraudulent Conveyances.

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APPENDIX;

By The Same Author.

The Resolutions of the Judges, &c.

(1.) THe Statute of 13 *El. cap.* 5. is made perpetual by 25 *El. cap.* 5. The words are; For the avoiding and abolishing of feigned Conveyances, covenous & fraudulent Feoffments, Gifts, Grants, and Alienations, Conveyances, Bonds, Suits, Judgements and Executions, as well of Lands and Tenements, as of Goods and Chattels; which have been and are contrived or devised of malice, fraud, coven, collusion or guile; to the end to delay, hinder or defraud Creditors and others of their just and lawful Actions, Suits, Debts, Accompts, Damages, Penalties, Forfeitures, Heriots, Mortuaries, and Reliefs; not only to the let or hindrance of the due course and execution of Law and Justice; but also to the overthrow of all true and plain dealing between man and man, *&c.* Fraudulent Conveyances, 13 El. Chap. 5.

(2.) Be it therefore declared, ordained and enacted, that all and every Feoffment, Gift, Grant, Alienation, Bargain and Conveyance of Lands, Tenements, Hereditaments, Goods and Chattels, or any of them; or any Leaſe, Rent, Commons, or other profit or charge out of the ſame, or any of them, by writing or otherwiſe; and all and every Bond, Suit, Judgement and Execution, at any time had or made ſince the beginning of the ſaid Queens Reign, or at any time hereafter to be had or made to or for any intent or purpoſe before declared and expreſſed; ſhall be from henceforth deemed and taken, [only againſt the perſons their Heirs, Succeſſors, Executors, Adminiſtrators and Aſſigns, whoſe Actions, Suits, Accompts, Damages, *&c.* by ſuch Practiſes, may or ſhall be in any waies diſturbed] to be clearly and utterly void: Any pretence, colour, feigned conſideration, expreſſion or uſe, other matter or thing to the contrary notwithſtanding.

(3.) And be it further enacted, That all and every the parties, to ſuch feigned, covenous, or fraudulent Feoffment, Gift, Grant, Alienation, Bargain, Conveyance, Bonds, Suits, *&c.* and other things

things before expreſſed; and being privie, and knowing of the ſame, or any of them, which at any time after the 10 *th.* day of *June* next coming, ſhall wittingly and willingly put in ure, avow, maintain, juſtifie or defend the ſame, or any of them, as true, ſimple, and done, or made *bona fide*, and upon good conſideration; or ſhall alien or aſſign any of the Lands, Tenements, Goods, Leaſes, or other things before mentioned, to him or them conveyed, as aforeſaid, or any part thereof; ſhall incur the penalty and forfeiture of one years value of the ſaid Lands, Tenements, Hereditaments, Leaſes, Rents, Commons, or other profits out of the ſame; and the whole value of the ſaid Goods and Chattels, and ſo much money as ſhall be contained in any ſuch covenous and feigned Bond: The one Moyetie thereof to be the Queens Majeſtie, the other to the party grieved, by ſuch feigned and fraudulent Gift, Grant, *&c.* to be recovered in any of the Queens Courts of Record, by Debt, Bill, Plaint, or Information, wherein no eſſoyne, protection, or wager of Law ſhall be admitted for the Defendant or Defendants: And he alſo, being lawfully convicted, ſhall ſuffer im-

prisonment for half a year, without Bail or mainprise:

What the Statute extends not to.

(4.) Provisoes; First, that the Statute shall not extend to common Recoveries, &c. Secondly, nor to any person or persons that shall use any voucher in *Formedon*. Thirdly, Nor to any Conveyances made upon good consideration, and *bona fide* to any person or persons, corporation, &c. without covin, &c.

Gift made by a Papist.

(5.) Between *Pauncefoot* and *Blunt* in the *Chequer Chamber*, the case was; *Pauncefoot* being a Papist, was indicted for his Recusancie, and he made a gift of all his Leases and Goods upon colourable consideration, and fled beyond Sea, and was after outlawed upon the said Indictment; and some thought, that by the Common Law, the said gift was void, in regard it was in prejudice of the Queen; but all agreed that the said Statute of 13 *Eliz.* extends to it; for it extends not only to Creditors, but to all such as have any cause of action or suit, or any penalty or forfeiture: And it was also resolved, that this word, Forfeiture, shall be intended, not only of a forfeiture upon an Obligation, Recognizance, &c. but

but to every thing lawfully forfeited to the King, or a Subject: And therefore, if a man to prevent a forfeiture by felony, or outlawry, makes a gift of all his Goods, and after is attainted or outlawed, these Goods are forfeited, notwithstanding the Gift, *Cook, lib.* 3. 82. Felon.

(6.) It was held, that the Statute of 13 *Eliz. cap.* 5. extends to a fraudulent conveyance made by the Heir of the Debtor, of lands descended to him from his deceased Ancestor, as well as by the Debtor himself; for in such case the Heir is Debtor, and the Writ against him is in the *debet* and *detinet*, whereas against an Executor it is in the *detinet* only, *Croke*, part 1. 350. *p.* 1. Per Heir of Debtor.

(7.) It was found by a special Verdict; That a Testator was seized of divers Goods, to the value of 250*l.* and by covin to defraud his Creditors, he made a gift of the said Goods to his Daughters, with a condition, that upon payment of 20*s.* it should be void, and dyed; this was held to be a fraudulent gift, by 13 *Eliz. cap.* 5. and that notwithstanding it, the Goods continued *Assets*, *Croke*, part 1. 810. *p.* 16. *Bethel* and *dw. Stanhope.* Gift upon Condition.

Gift by Executrix, who continues poſſeſſion.

(8.) An Executrix makes a fraudulent gift of the goods of the Teſtator, & inter-marrieth; and her husband taketh upon him payment of Debts, &c. The Goods being ſtill in their poſſeſſion, were held to be ſtill *Aſſets*, *Croke*, part 1. 406. *p.* 16. *Wilcotts*, verſ. *Watſon*.

Conſideration.

(9.) A man maketh a Leaſe for 80 years of Lands, without any conſideration; and he after ſetleth a Joynture upon his Wife of the ſame Lands; ſhe could not avoid that Leaſe, becauſe the Conveyance to her was likewiſe voluntary, and without any valuable conſideration, *Croke*, part 1. 445. *p.* 8. *Upton* and *Baſſett*.

Gift pending a writ.

(10.) *Pierce* was in debt to *Twine* 400 *l.* and to *C.* 200 *l.* *C.* brought Debt againſt *Pierce*, and pending the Writ, *Pierce* being poſſeſs'd of goods to the value of 300 *l.* in ſecret makes a general gift of all his Goods and Chattels, real and perſonal whatſoever, to *Twin*, in ſatisfaction of his debt; and yet notwithſtanding *Pierce* continueth in poſſeſſion, and ſome of them he ſold, and he marked the ſheep with his own mark: And after

ter *C.* had a Judgement againſt *Pierce*, and a *Fieri Facias* to the Sheriff, who coming to make execution by force of the Writ, divers perſons by *Twins* command reſiſted the Sheriff, claiming the goods as *Twines* by force of the ſaid gift: and this was reſolved to be a fraudulent gift; and that in the ſaid caſe there were theſe ſeveral marks of fraud: Firſt, the gift is general, without any exception, ſo much as of wearing apparel: Secondly, the Donor continueth in poſſeſſion: Thirdly, It was ſecret: Fourthly, it was made pending the writ: *Fifthly*, here was a Truſt between the parties, for the donor ſtill uſeth the goods as his own: Sixthly, the words of the Deed are, that it was made honeſtly, truly, and *bonâ fide, & clauſulæ inconſuetæ inducunt ſuſpitionem*, Cooke, lib. 3. 81. Twines caſe. Marks of Fraud.

(11.) Secondly, it was reſolved in the ſame caſe, that although here were a Debt due to *Twine*, and a good conſideration of a gift, yet it was not aided by the ſame Proviſo in 13 *Eliz.* which was, that the ſaid Act ſhould not extend to any Eſtate or Eſtates made upon good conſideration, and *bona fide*; for this is not *bona fide*, becauſe it is upon a Truſt, and Conſideration bona fide.

and no gift ſhall be conſtrued, to be *bona fide*, within the ſaid Statute, that is made upon a Truſt, *Cooke, lib.* 3. 81. *Twines* caſe.

Advice touching Gifts.

(12.) And it is my Lord *Cookes* advice in the ſaid caſe, that when any gift is to be made in ſatisfaction of a debt: Firſt, that it be publickly done before Neighbours: Secondly, that the goods, *&c.* given, be appraiſed by honeſt men: Thirdly, that the Donee preſently after the gift, take poſſeſſion; for the continuance of poſſeſſion in the Donor, is a mark of Truſt, *Cooke, lib.* 3. 81. *Twines* caſe.

(13.) One held divers lands of divers Lords by *Herriott* cuſtome; and to defraud one of the Lords of his *Herriot*, he made a fraudulent gift of all his beaſts *Herriottable, viz.* of 20 Horſes: The Lord, who was hereby grieved, bringeth Debt upon 13 *Eliz. tam pro Domina Regina quam pro ſeipſo*, demanding the value of the 20 Horſes; and by *Dyer* and *Harper*, it was well ſaid, by intendment of the Statute; for it may be, he ſhall never come to ſeize his *Herriott*, and if he ſhall recover but the value, the Queen ſhall have the one Moyetie: But *Man-*

wood

wood held *contra*; for the other Lords are as recompenſable for their *Herriotts*, as the Plaintiff: and *Harper* held, that all the Lords might joyn in an action; but *quere*, ſaith *Dier*, 351. *p.* 23.

(14.) Upon communication of marriage between Sir *R. G.* and the Lady *S.* the ſaid Sir *R. G.* promiſed, before the affiance, to aſſure unto her 1000 *l. per an.* for her Joynture, (his Eſtate being then 12000 *l. per an.*) and thereupon ſhe married him, without any aſſurance or covenant in that behalf: After, he conveyed by Deed lands of great value to ſome friends of the Ladies [then his Wife] to the uſe of the ſaid Lady for term of 100 years, if ſhe ſo long lived, to commence after his death, and it was indorſed on the back of the Deed, that the intent was, that when there ſhould be a Joynture of 1000 *l. per an.* ſetled on her, according to the firſt agreement, the Leaſe ſhould be void: and it was held, that this was no fraudulent Leaſe, notwithſtanding the Proviſo, to determine it at the Husbands will; for the Court took diverſity between the caſe above, and when a Leaſe is made with a Proviſo, That if the Leſſor pay 10 *s. &c.* the Leaſe

Proviſo, to determine, &c.

Leaſe to be void, becauſe in the later caſe, the ſmalneſſe of the ſum payable, makes it apparent to be only a power of revocation; and ſuch a Leaſe a purchaſer ſhall avoid; And the Court held, that the Leaſe aforeſaid being made in purſuance of the firſt promiſe, although no mention of a Leaſe was therein made, yet it was grounded upon a good conſideration, and not fraudulent: And although it was objected, that the Lady had concealed the Leaſe, during her Husbands life, and therefore it ſhould be fraudulent, *&c.* yet, it was anſwered thereunto by the Chief Juſtice; That actions ought to have their reſort to the firſt original, and the Leaſe being good at the firſt, the concealment cannot make it ill, *Croke*, part 2. 455. *p.* 13. *Dame Griffin*, verſ. *Stanhope.*

Evidence. (15.) *Scire Facias* [upon a Judgement in Debt, againſt *T. H.* who died] againſt the *Terre* Tenants, they pleaded a Feoffment made by *T. H.* long before the Judgement, *abſq; hoc*, that he was ſeized at the time of the Judgement, or after: and iſſue being thereupon taken, the Jury found the Feoffment, and that it was made by covin to defraud the Plaintiff and

and other Creditors; and judged for the Plaintiff; for *T. H.* remained ſtill ſeized as to the Creditors, notwithſtanding the Feoffment: But if iſſue had been directly taken, enfeoffed, or not enfeoffed, it had been found againſt the Plaintiff; for in ſuch caſe, he muſt avoid the Feoffment, by covin, ſpecially pleaded: but here the Iſſue being ſeized or not ſeized by the Feoffment, the covin may be given in evidence, *Hobert*, fol. 72. *Humberton* verſ. *Howgill.*

(16.) Debt brought by *Hawes verſ. Leader* as Adminiſtrator of *Tho. Cookſon*: the Caſe was, that *Tho. Cookson* for 20 *l.* did grant unto the Plaintiff all his Goods mentioned in a Schedule, annexed to the Deed, and gave poſſeſſion by a Pewter-diſh, with a covenant ſafely to keep them, and to deliver them unto the Plaintiff upon demand, and bound himſelf in 40 *l.* to perform the Covenant; *Tho. Cookson* dies, and the Plaintiff demands of the Defendant (being the Adminiſtrator of *Cookson*) the goods, who refuſed to deliver them, and hereupon the Plaintiff brought his action; the Defendant pleaded the Statute of 13 *Eliz. cap.* 5. and that *Cookson* was indebted to divers

Fraudulent Gifts of Goods.

divers in ſums amounting to 100 *l.* [naming in particular, the perſons and the ſums] and being ſo indebted, makes the ſaid gift, being then of thoſe and other goods poſſeſs'd, to the value of 80 *l.* and no more; and that the Deed was made by fraud between them, to deceive his Creditors, and the Plaintiff demurred: Firſt, becauſe the Defendant avers not that the debts were unpaid: Secondly, becauſe he doth not ſhew that the debts were due by Specialty, for an Adminiſtrator is not lyable to other debts: Thirdly, the Defendant ſuppoſeth, that the delivery of the goods would be a *devaſtavit* in him which cannot be; for the goods in the Plaintiffs hands, are lyable to Creditors, as Executor *de ſon tort demeſne*, if the Deed be fraudulent: Fourthly, It may be the Creditors will never ſue, and then the Defendant might detain the goods for ever, which is inconvenient: Fifthly, the Defendant is not a perſon inabled by 13 *Eliz.* to plead that Plea; for the Statute makes the Deed void only againſt Creditors, but not againſt the party himſelf, his Executors, or Adminiſtrators, judged for the Plaintiff, *Croke*, part 2, 270. *p.* 3 *Hawes verſ. Leaſder.*

17. This

(17.) This fraud need not be pleaded: In debt brought against the heir upon an obligation made by his father, the defendant pleaded nothing by deſcent; and it was found that before the ſuit began, the defendant had made a Feoffment in Fee of all his Lands, to defraud the Plaintiff of his action, but this fraud was not pleaded: Reſolved by the Court, it need not be pleaded ſpecially, but only given in evidence: Firſt, becauſe 13 *Eliz.* provides generally, that the eſtate as to the Creditors ſhall be void; and Acts of Parliament made to ſuppreſs fraud, ſhall be favourably interpreted. Secondly, fraud, and covin are ſo privily hatched, that the party grieved hath no means to find them out, and then to force the Plaintiff, who is a ſtranger to plead it, would be againſt reaſon, *Cook, lib.* 5. 60. *Gooches Caſe.* Frauds need not be pleaded, but given in evidence.

(18.) The Court ſhall not intend fraud, where it is not found by the Jury: *A.* ſeized of Lands in Fee, holden of *I. L.* of his Mannor of *H.* by Fealty, Rent, and rendring the beſt beaſt, after the death of every Tenant in Fee-ſimple, *A.* by Deed in conſideration of love to his Son and heir apparent, and a marri- Fraud not intendible by the Court.

age

age between his Son and *B.* and for the Sons advancement, infeoffes his ſaid Son of the ſaid Land: the Son afterward to the end *B.* ſhould not be endowed during his fathers life, re-demiſeth the Land to his father for 40 years, if he lived ſo long: The marriage took effect, the Son did his ſuite, and after the Feoffment, the father paid the Lords Rent: the father dies, the Lord taketh his beſt Beaſt for an Herriot; and in Treſpaſs brought, the Jury found all the ſpecial matter, alſo the Statute of 13 *Eliz.* But it was reſolved, That in regard no fraud was found by the Jury, the Court ſhould not intend the ſaid Feoffment to be fraudulently made: and the ſame being found to be made in conſideration of marriage, ſhall not by conſtruction of Law be taken to extend to any other intent, nor to be fraudulent, *Cook, lib.* 10. 56.

Conſideration.

(19.) There are two manner of gifts upon good conſideration: Firſt, upon conſideration of Nature and Blood. Secondly, a valuable conſideration: and the Statute of 13 *Eliz. cap.* 5. and the *Proviſo* therein extends only to a valuable conſideration: for a gift made to defeat others, muſt be made upon as high and good

good consideration, as the things to be defeated are: also every gift made upon trust, is out of the said *Proviso*, because it is not *bona fide*: and a trust is either expressed, or implied; expressed, when it is set down in, or upon the gift; implied, when the gift is made without any consideration, or upon consideration of Nature and blood, *Cook, lib.* 3. 81. *b. Twines Case.*

27 Eliz. Chap. 4. Concerning Fraudulent Conveyances.

Stat. of 27 Eliz. Deceit of purchasers.

1. BY the Statute of 27 *Eliz. cap.* 4. It is ordained and enacted, That all and every Conveyance, Grant, charge, leaſe, eſtate, incumbrance, and limitation of uſe or uſes, of, in or out of any lands, tenements, or other hereditaments whatſoever, had or made at any time heretofore, ſince the beginning of the Queens Reign, or hereafter to be made, for intent or purpoſe to defraud and deceive ſuch perſon and perſons, Bodies Politike, or Corporate, as have purchaſed, or ſhall hereafter purchaſe, in Fee-ſimple, Fee-tail, for life, lives, or years, the ſame Lands, Tenements, or Hereditaments, or any part thereof, ſo formerly conveyed, leaſed, *&c.* or to defraud and deceive ſuch as have, or ſhall purchaſe any Rent, Profit, or Commodity, in or out of the ſame, or any part thereof, ſhall be deemed and taken, only as againſt that per-

perſon and perſons, bodies Politique and Corporate, his and their heirs, ſucceſſors, executors, adminiſtrators, and aſſigns, and againſt all and every other perſon and perſons lawfully having or claiming, by, from, or under them, or any of them, which have purchaſed, or hereafter ſhall ſo purchaſe for money or other good conſideration, the ſame Lands, Tenements, or hereditaments, or any part thereof, or any rent, profit, or commodity, in, or out of the ſame, to be utterly void, fruſtrate, and of none effect.

(2.) And be it further Enacted, That all and every the parties, to ſuch feined, covenous, and fraudulent gifts, grants, leaſes, *&c.* before expreſſed, or being privy to, or knowing of the ſame, or any of them, which after the 20 *th.* of *April* next coming, ſhall wittingly, or willingly put in ure, juſtifie, or defend the ſame, or any of them, as true, ſimple, and done, or made *bona fide*, or upon good conſidetion, to the diſturbance, or hinderance of the ſaid Purchaſers, *&c.* ſhall incur the penalty, and forfeiture of one years value, of the ſaid Lands, Tenements, and hereditaments, ſo purchaſed, or charged; the one moiety to the Queen, the other, Penalty.

the party grieved, to be recovered in any of the Queens Courts of Record, by debt, bill, plaint, or information, where no eſſoyn, protection, or wager of Law, ſhall be admitted to the defendant, or defendants, and to ſuffer impriſonment for one half year without Bail or Mainprize: 27 *Eliz. chap.* 4.

(3.) Provided, that this Act ſhall not extend to any grant, *&c.* made upon good conſideration, and *bona fide*, nor to any mortgage made *bona fide*, without fraud, and upon good conſideration: 27 *El. chap.* 4.

Conveyance with clauſe of Revocation.

(4.) And it is further enacted, that if any perſon or perſons have ſince the Queens Reign that now is, or ſhall hereafter make any conveyance, gift, grant, demiſe, charge or limitation of uſe or uſes, of, in, or out of any lands, tenements, or hereditaments, with any clauſe or condition of Revocation, determination, or alteration, at his or their will and pleaſure of ſuch conveyance, *&c.* of, in, or out of the ſaid lands, tenements, or hereditaments, or any part or parcel thereof; and after ſuch conveyance, gift, *&c.* ſo had, or made, ſhall bargain, ſell, demiſe, grant,

grant, convey, or charge the ſame Lands, Tenements, or Hereditaments, or any part thereof, to any perſon or perſons, bodies politique or corporate, for money, or other good conſideration payed or given; [the ſaid firſt conveyance, *&c.* not being by him revoked, made void, or altered, according to the power reſerved;] That then the ſaid former conveyance, aſſurance, *&c.* as touching the ſaid Lands, Tenements, and Hereditaments, ſo after bargained, *&c.* againſt the ſaid Bargainees, Leſſees, and Grantees, and every of them, their heirs, ſucceſſors, executors, adminiſtrators and aſſigns ſhall be void, *&c.* 27. *El. cap.* 4.

(5.) *J. C.* had a leaſe for 60 years (if he lived ſo long) and he forged a Leaſe for ninety years abſolutely; and by Indenture reciting the forged Leaſe, he bargained and ſold the ſame, and all his intereſt in the Land to *R. G. R. G.* is no purchaſer for valuable conſideration, within the ſaid Statute of 27 *Eliz.* becauſe he contracted not for the true and lawful intereſt; and although by the words, his true intereſt paſſed: yet he gave no valuable conſideration for it: *Cook upon Littl. fol.* 3. *b.* Leaſe forged.

The Act binds the King.

(6.) One who intended to ſell his Lands, had by fraud conveyed the ſame by Deed inrolled to the Queen: In this caſe the purchaſer ſhall enjoy the Land againſt the Queen, by the Statute of 27 *Eliz.* for that Act being general and made in ſuppreſſion of fraud, ſhall bind the Queen: *Cook, lib.* 11. 74. *a. Magdalen Colledge Caſe.*

Future power of Revocation.

(7.) A man conveyed his Lands to the uſe of himſelf for life, and after to the uſe of divers others of his blood, with a future power of Revocation, *viz.* after ſuch a Feaſt, or after the death of ſuch an one, *&c.* and before the power of Revocation commenceth, he, for valuable conſideration doth bargain and ſell the ſame lands to another, and his heirs: this bargain and ſale is within the remedy of 27 *Eliz. cap.* 4. for although the Statute ſaith, [*the firſt conveyance not by him revoked*] which ſeems by the literal ſence to be intended of a preſent power of Revocation, for no revocation can be made by force of a future power, before it comes in *eſſe*; yet it was held that the intent of the Act was, that ſuch voluntary Conveyance that was originally ſubject to a power of Revocation, be it in preſent

ſent or in future, ſhall not ſtand againſt a purchaſer, who cometh in upon good and valuable conſideration, and *bona fide*, *Cook, lib.* 3. 82. *Twines Caſe.*

(8.) Reſolved, That if a man hath power of Revocation, and after to the intent to defraud a purchaſer, he levy a Fine, or make a Feoffment, or other conveyance to a ſtranger, whereby he extinguiſheth this power; and after he bargain and ſell the lands to another for valuable conſideration, the Bargainee ſhall enjoy the Land; for as to him, the Fine, Feoffment, or other conveyance, by which the condition was extinct, was void by the ſaid Act of 27 *Eliz.* And it was ſaid, that the ſaid Act made voluntary Conveyances, with power of Revocation, in an equal degree as to purchaſers, with conveyances made to defraud purchaſers: *Cook, lib.* 3. 82. *b. Twines Caſe.* Power of Revocation extinguiſhed.

(9.) If a man make a Leaſe for years by covin and fraud, and after make another Leaſe *bona fide* without Fine paid, or rent reſerved; the ſecond leaſe ſhall not avoid the firſt: for firſt, it was agreed, that by the Common Law, an Conſideration.

Eſtate made by fraud ſhall be only void againſt him that had a former right, and not againſt him that had a puiſne right or intereſt. Secondly no purchaſer ſhall avoid a precedent conveyance made by fraud or covin, but he that is a purchaſer for money, or other valuable conſideration: and the words [*good conſideration*] in the Act, ought to be underſtood of valuable conſideration only, and not a conſideration of nature or blood, *&c. Cook. lib.* 3. 83. *Twines Caſe.*

(10.) A man of little capacity, and not able to govern the lands deſcended to him, and being diſpoſed to riot and diſorder, by mediation of friends, openly conveyed his lands to them, upon truſt and confidence, that he ſhould take the profits for his maintenance; and that he ſhould not have power to waſte and conſume them: and after being ſeduced by perſons, he ſold his Lands to them for a ſmall ſum of money: And this bargain and ſale, although it was for money, was held to be out of 27 *Eliz.* which Act was made againſt fraud and deceit, and ſhall not aid any purchaſer that cometh not to the land for good conſideration, lawfully and without fraud or deceit; but

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such a conveyance made upon trust, were void as to him that purchaseth it for valuable consideration, and *bona fide*, *Cook. lib.* 3. 83. *b. Twines Case.*

(11.) If a man seized of Lands in Fee make a fraudulent Conveyance, to the end to deceive and defraud a purchaser, against the Statute of 27 *Eliz.* and continueth in possession, and is reputed as owner, and *B.* enter into communication with *A.* for the purchase of it, and by accident *B.* hath notice of this fraudulent conveyance, and yet notwithstanding he concludes with *A.* and taketh an assurance from him; yet *B.* shall avoid this fraudulent conveyance, by the said Act of 27 *Eliz.* notwithstanding his notice; for the Act by expreſs words makes the fraudulent conveyance void, as to a Purchaser, for the notice of a Purchaser, cannot make that good, which by Act of Parliament is void, as to it: *Cook, lib.* 5. 60. Notice of the fraud.

(12.) One, after Marriage, voluntarily assigns a Lease for years, as it were in joynture for his wife, and took the profits, and after sold it to one who had no notice of this conveyance: this was held to be within 27 *Eliz.* although at Voluntary Conveyance.

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the first it was not made upon trust, to be revoked, &c. because it was a voluntary conveyance at the first, and shall be intended fraudulent at the beginning: But if at the time of the Marriage, or after, by reason of a portion given by his wives friends, in recompence thereof, and for a Provision for maintenance of his wife, he had made an assignment of such a Lease to his wives friends, and had after taken the profits thereof, as in reason he ought during his life, and had then sold that Term, yet it had not been within the said Statute. *Crook, part* 2. 158. *Colvil verſ. Parker.*

(13.) A man Covenants for natural love, &c. to stand seized to the use of himself for life, the remainder to his Son in Tail, with a power of Revocation, and a *Proviſo* to make Leases for 21 years; and after makes a Lease for 21 years, for 30 *lib.* Fine paid. Resolved, That notwithstanding this voluntary and revokeable conveyance, yet the Lease for years was absolutely good, by 27. *Eliz.* and as to the Lessee, the conveyance shall be construed, as if it had been revoked, and that the Lessor was then Tenant in Fee; and it was also resolved, That in case of

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a Leaſe for years, made as before, there had been a Rent only reſerved, it had been a good conſideration, and within the Statute; and the making of ſuch Leaſe was a revocation of the firſt Eſtate according to the Leaſe, *Croke*, part 2. 181. *p.* 19. Alſo it was reſolved, that the ſaid Leaſe for years; reſpect being had only to the Proviſo, and power thereby given, was void; for it being only a covenant, and the conſideration not extending to the Leaſe for years, no uſe is raiſed to him thereby, *ibidem.*

(14.) Grandfather, Father, and Son; the Grandfather, upon the Fathers marriage, makes the Wife of the Father a Joynture; and at the ſame time, covenants to demiſe other Tenements to the Father for 1000 years, and after maketh ſuch demiſe accordingly, to commence after his death; in which was a Proviſo to make the ſame void, upon the Fathers dying without iſſue, or making a Leaſe not reſerving the antient Rent; the Father after aſſigns the ſaid Leaſe to the uſe of his Son (an infant) to the intent, that it ſhould not drown by the deſcent of the reverſion, and with the colourable

ble purpose and intent, that the infant should pay debts, *&c.* The Grandfather dies, the Father enters into the Lands, and taketh the Profits, and makes Leases, and doth other Acts as Owner; and neither the Assignees nor Infant took any Profits, or paid any Debts; and the Assignment was made to divers persons of good reputation, but the assignment it self was delivered into the hands of a person of mean quality; The Father after bargains and sells the said Lands for a great sum of money by Deed inrolled: By all which marks, the said Lease and Assignment were taken to be fraudulent, *Cooke, lib. 6. 72. a. Burrells* case.

(15.) Resolved, (in the said Case) That whereas the words of the said Act of 27 *Eliz.* are, That all and every Conveyance, Grant, *&c.* for the intent to defraud or deceive such persons as have purchased, or shall purchase the same Lands, *&c.* shall be deemed, only against such Purchasers, void: yet if the Father make a Lease by fraud and covin of his Lands, to defraud others, to whom he shall demise or sell it, [as all fraudulent demises shall be intended,]

and

and before the Father ſells or demiſeth it, he dyeth; and the Son knowing or not knowing the ſaid Leaſe, ſell the Land upon good Conſideration. In this Caſe the Vendee ſhall avoid the ſaid Act of 27 *Eliz.* For the Words of the Act are general, and it is not needful that he who ſold the Land, ſhould make the former Eſtate or Incumbrance. But if the Eſtate be fraudulent, whoſoever is the Seller, the Purchaſer ſhall avoid ſuch Fraudulent Eſtate. Alſo it was reſolved, That although the Father had nothing of Inheritance in the Land, at the Time of the Aſſignment of the Leaſe, but the Inheritance was in the Grandfather, yet when the Grandfather dyeth, and the Father ſells the Land, his Vendee ſhall avoid the ſaid Term: for if he had bargained and ſold the term only, the Bargain ſhould have avoided the fraudulent Aſſignment, and by conſequence, the Vendee of the whole Fee-ſimple ſhall avoid it. *Cooke, Lib. 6. 72. a. b. Burrell's* Caſe.

(16.) In Treſpaſs: The Plaintiff and Defendant claim by ſeveral Leaſes from the ſame Man: The Plaintiff in his Declaration avers the Defendants Leaſe to be made by Fraud, but ſheweth not

any Consideration payed by himself, whereupon the Defendant Demurs. *Yelverton*, at Common Law there was not any Fraud remedied, to defeat an after-Purchase, but that only which was committed to defeat a former interest which was granted; and 27 *Eliz.* doth not aid it, for here is no Consideration paid for the second Lease, no more than for the first. *Lukener contra.* A thing obtained by a Mans own act, makes a Man a Purchaser within the said Statute, and the Fraud is confessed by the Demurrer. *Anderson.* The confession of the Fraud is not material, in regard the Plaintiff is not such a person as ought to have benefit thereby, and within the remedy and provision of the Act; and by that Act a fraudulent Conveyance is not made void against all, but only against such as come in upon valuable Consideration; *Wamsly*, according; and he said, That a fraudulent Gift of Goods, remains good against the Donor, but not against his Creditor, by 13 *Eliz. Crook*, part 1. 445. p. 8. *Upton* versus *Basset.*

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An Act for the Relief of Creditors against Fraudulent Deviſes. *Anno Tertio & Quarto W. & M.*

WHereas it is not reaſonable or juſt, that by the practice or contrivance of any Debtors, their Creditors ſhould be defrauded of their juſt Debts. And nevertheleſs it hath often ſo happened, That where ſeveral perſons having by Bonds or other Specialties bound themſelves and their Heirs, and have afterwards dyed ſeized in Fee-ſimple of and in Manors, Meſſuages, Lands, Tenements and Hereditaments, or hay power or authority to diſpoſe of or charge the ſame by their Wills or Teſtaments, have (to the defrauding of ſuch their Creditors, by their laſt Will or Teſtament) deviſed the ſame, or diſpoſed thereof in ſuch manner as ſuch Creditors, have loſt their ſaid Debts.

For remedying of which and for the maintenance of just and upright dealings. Be it enacted and declared by the King and Queen's most excellent Majesties, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same, That all Wills and Testaments, Limitations, Dispositions or Appointments, of or concerning any Manors, Messuages, Lands, Tenements, or Hereditaments, or of any Rent, Profit, Term or Charge out of the same, whereof any person or persons, at the time of his, her or their decease, shall be seised in Fee-simple, in Possession, Reversion, or Remainder, or have power to dispose of the same, by his, her, or their last Wills or Testaments, to be made after the five and twentieth day of March, in the Year of our Lord God, one thousand six hundred ninety and two; shall be deemed and taken (only as against such Creditor or Creditors as aforesaid, his, her,

her or their Heirs, Succeſſors, Executors, Adminiſtrators and Aſſigns, and every of them,) to be fraudulent, and clearly, abſolutely, and utterly void, fruſtrate, and of none effect, any pretence, color, feigned, or premeditated Conſideration, or other matter or thing to the contrary notwithſtanding.

And for the means that ſuch Creditors may be enabled to recover their ſaid Debts; be it farther enacted by the authority aforeſaid, That in the Caſes before mentioned, every ſuch Creditor ſhall and may have and maintain his, her and their Action and Actions of Debt, upon his, her, and their ſaid Bonds and Specialties, againſt the Heir and Heirs at Law of ſuch Obligor or Obligors, and ſuch Deviſee and Deviſees joyntly, by virtue of this Act; and ſuch Deviſee and Deviſees ſhall be lyable and chargable for a falſe Plea by him or them pleaded, in the ſame manner as any Heir ſhould have been for any falſe Plea by him pleaded,

or for not confessing the Lands or Tenements to him descended.

Provided always, and be it farther enacted by the authority aforesaid, That where there hath been or shall be any limitation or appointment, device or disposition, of or concerning any Manors, Messuages, Lands, Tenements, or Hereditaments, for the raising or payment of any real and just debt or debts, or any portion or portions, sum or sums of mony, for any Child or Children of any person, other than the Heir at Law, according to, or in pursuance of any Marriage Contract or Agreement in writing, bona fide made before such Marriage, the same and every of them shall be in full force, and the same Manors, Messuages, Lands, Tenements and Hereditaments, shall and may be holden and enjoyed by every such person or persons, his, her and their Heirs, Executors, Administrators and Assigns, for whom the said limitation, appointment, device or disposition was made, and by his, her and

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their Truſtee or Truſtees, his, her and their Heirs, Executors, Adminiſtrators and Aſſigns, for ſuch Eſtate or Intereſt as ſhall be ſo limited or appointed, deviſed or diſpoſed, until ſuch debt or debts, portion or portions ſhall be raiſed, paid and ſatisfied, any thing in this Act contained to the contrary notwithſtanding.

And whereas ſeveral perſons, being Heirs at Law, to avoid the payment of ſuch juſt Debts, as in regard of the Lands, Tenements and Hereditaments, deſcending to them, they have by Law been lyable to pay, have ſold, alienated, or made over ſuch Lands, Tenements, or Hereditaments, before any proceſs was or could be iſſued out againſt them.

Be it farther enacted by the authority aforeſaid, That in all Caſes where any Heir at Law ſhall be lyable to pay the Debt of his Anceſtor, in regard of any Lands, Tenements, or Hereditaments, deſcending to him, and ſhall ſell, alien, or make over the ſame, before any action brought, or

proceſs ſued out againſt him, that ſuch Heir at Law ſhall be anſwerable for ſuch debt or debts, in an action or actions of debt, to the value of the ſaid Lands by him ſold, alienedor made over, in which caſes all Creditors ſhall be preferred as in Actions againſt Executors and Adminiſtrators, and ſuch Executions ſhall be taken out upon any Judgment, or Judgments, ſo obtained againſt ſuch Heir, to the value of the ſaid Lands, as if the ſame were his own proper debt or debts, ſaving that the Lands, Tenements and Hereditaments, (bona fide) alienedbefore the Action brought, ſhall not be lyable to ſuch Execution.

Provided always, and be it farther enacted by the authority aforeſaid, That where any Action of Debt, upon any ſpecialty is brought againſt any Heir, he may plead (Riens per Diſcent) at the time of the Original Writ brought, or Bill filed againſt him, any thing herein contained to the contrary notwithſtanding. And the Plaintiff

tiff in such action may reply, That he had Lands, Tenements or Hereditaments from his Ancestor, before the Original Writ brought, or the Bill filed, and upon Issue joyned thereupon, if it be found for the Plaintiff, the Jury shall enquire of the Lands, Tenements, or Hereditaments, so descended, and thereupon Judgment shall be given, and Execution shall be awarded, as aforesaid; but if Judgment be given against such Heir by confession of the Action, without confessing the Assets descended, or upon Demurrer or (Nihil dicit) it shall be for the Debt and Damages, without any Writ to enquire of the Lands, Tenements, or Hereditaments so descended.

Provided also, and be it farther enacted, That all and every Devisee and Devisees made lyable by this Act, shall be lyable and chargable in the same manner as the Heir at Law, by force of this Act, notwithstanding the Lands Tenements and Hereditaments, to him or them devised, shall be

alienedbefore the Action brought.

Provided always, That this Act shall be in force for three Years, and to the end of the next Sessions of Parliament, after expiration of the said three Years and no longer. 'Tis now made perpetual by Stat. 6 and 7 *W.* 3.

An Act to prevent Frauds by Clandestine Mortgages. *Anno Quarto & Quinto VV. & M.*

WHereas great Frauds and Deceits are too often practised, by necessitous and evil-disposed persons, in borrowing of Mony, and giving Judgments, Statutes and Recognizances privately, for securing the re-payment of the said Mony; and the same persons do afterwards borrow Mony upon Security of their Lands, of other persons, and do not acquaint the latter lenders there-

thereof with the same, whereby such late lender is very often in danger to lose his whole mony, and forced to pay off the Debts secured by the said Judgments, Statutes and Recognizances, before they can have any benefit of the said Mortgages.

And whereas divers persons do many times Mortgage their Lands more than once, without giving notice of their first Mortgage, whereby lenders of mony upon second or after Mortgages do often lose their mony, and are put to great Charges in Suits and otherwise.

For Remedy whereof, and preventing the same as much as may be for the future; Be it enacted by the King and Queen's most excellent Majesties, by and with the advice and consent of the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by the authority of the same, That if any person or persons from and after the first day of May, which shall be in the year of our Lord,

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one thousand six hundred ninety and three, shall borrow any mony, or for any other valuable Consideration for the payment thereof, voluntarily give, acknowledge, permit or suffer to be entred against him or them, one or more Judgment or Judgments, Statute or Statutes, Recognizance, or Recognizances, to any person or persons, Creditor or Creditors; and if the said Borrower or Borrowers, Debtor or Debtors shall afterwards take up or borrow any other Sum or Sums of mony, of any other person or persons, or for any other valuable Consideration, become indebted to such person or persons, and for securing the repayment and discharge thereof, shall Mortgage his, her or their Lands or Tenements, or any part thereof, to the said second or other Lender or Lenders of the said mony, Creditor or Creditors, or to any others Person or Persons, in Trust for, or to the Use of such second or other Lender or Lenders, Creditor or Creditors, and

shall

shall not give notice to the said Mortgagee or Mortgagees of the Judgment or Judgments, Statute or Statutes, Recognizance or Recognizances, in Writing, under his, her or their Hand or Hands, before the execution of the said Mortgage or Mortgages, unless such Mortgager or Mortgagers, his, her or their Heirs, upon notice to him, her or them given by the Mortgagee or Mortgagees, of the said Lands and Tenements, his, her or their Heirs, Executors, Administrators and Assigns, in Writing, under his, her or their Hands and Seals, attested by two or more sufficient Witnesses, of any such former Judgment or Judgments, Statute or Statutes, Recognizance or Recognizances, shall within six months pay off and discharge the said Judgment or Judgments, Statute or Statutes, Recognizance or Recognizances, and all Interest and Charges due thereupon, and cause or procure the same to be vacated or discharged by Record, that then the Mortga-

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ger or Mortgagers of the said Lands and Tenements, his her, or their Heirs, Executors, Administrators and Assigns, shall have no benefit or remedy against the said mortgagee or mortgagees his, her and their Heirs, Executors, Administrators or Assigns, or any of them, in Equity or elsewhere, for Redemption of the said Lands and Tenements, or any part thereof; but the said mortgagee or mortgagees, his, her or their Heirs, Executors, Administrators and Assigns, shall and may hold and enjoy the said Lands and Tenements, for such Estate and Term therein, as were or was granted and setled to the said mortgagee or mortgagees, against the said mortgager or mortgagers; and all person and persons lawfully claiming from, by or under him, her or them, freed from Equity of Redemption, and as fully to all intents and purposes whatsoever, as if the same had been purchased absolutely, and without any power or liberty of Redemption.

And

And be it farther enacted by the authority aforesaid, That if any person or persons, who have or hath once mortgaged, or from and after the first day of May shall mortgage any Lands or Tenements to any person or persons, for security of mony lent, or otherwise accrued or become due, for other valuable Considerations; and if the said mortgager or mortgagers shall again mortgage the said Lands or Tenements, or any part thereof, to any other person or persons for valuable Considerations (the said former mortgage being in force and not discharged) and shall not discover to the said second or other mortgagee or mortgagees, or some or one of them, the former mortgage or mortgages in Writing. under his or their Hands, that then and in those cases also the said mortgager or mortgagers, his her or their Heirs, Executors, Administrators or Assigns, shall have no Relief or Equity of Redemption, against the said second or after mortgagee or mortgagees,

his,

her, or their Heirs, Executors, Administrators, or Assigns, upon the said after mortgage or mortgages, but that such mortgagee or mortgagees, his, her, or their Heirs, Executors, Administrators or Assigns, shall and may hold and enjoy such more than once mortgaged Lands and Tenements, for such Estate and Term therein as were or was granted and conveyed by the said mortgager or mortgagers, against him, her or them, his, her or their Heirs, Executors, or Administrators, respectively freed from Equity of Redemption, and as fully to all intents and purposes as if the same had been an absolute Purchase, and without any power or liberty of Redemption.

Provided always and be it further enacted, That nevertheless if it so happen there be more than one mortgage at the same time made by any person or persons, to any person or persons of the same Lands and Tenements, the several late or under mortgagees, his her, or their Heirs, Executors, Ad-

Administrators or Assigns, shall have power to redeem any former mortgage or mortgages, upon payment of the principal Debt, Interest and Costs of Suit to the prior mortgagee or mortgagees, his, her or their Heirs, Executors, Administrators or Assigns, any thing herein contained to the contrary thereof in any wise notwithstanding.

Provided always, That nothing in this Act contained shall be construed, deemed or extended to bar any Widow of any mortgager of Lands or Tenements from her Dower and Right, in or to the said Lands, who did not legally joyn with her Husband in such mortgage, or otherwise lawfully bar or exclude her self from such her Dower or Right.

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